

111TH CONGRESS  
1ST SESSION

# H. R. 3739

To amend title V of the Small Business Investment Act of 1958 to provide for improved long-term financing to small business concerns, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

OCTOBER 7, 2009

Mr. BUCHANAN introduced the following bill; which was referred to the  
Committee on Small Business

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## A BILL

To amend title V of the Small Business Investment Act of 1958 to provide for improved long-term financing to small business concerns, and for other purposes.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

3       **SECTION 1. SHORT TITLE.**

4       This Act may be cited as the “Job Creation and Eco-  
5       nomic Development Through CDC Modernization Act of  
6       2009”.

# 1 **TITLE I—GENERAL PROVISIONS**

## 2 **SEC. 101. PROGRAM LEVELS.**

3 Section 20 of the Small Business Act is amended by  
4 adding the following new subsection after subsection (e):

5 “(f) PROGRAM LEVELS.—

6 “(1) FISCAL YEAR 2010.—For financings au-  
7 thorized by section 7(a)(13) of this Act and title V  
8 of the Small Business Investment Act of 1958, the  
9 Administrator is authorized to make \$9,000,000,000  
10 in guarantees of debentures for fiscal year 2010.

11 “(2) FISCAL YEAR 2011.—For financings au-  
12 thorized by section 7(a)(13) of this Act and title V  
13 of the Small Business Investment Act of 1958, the  
14 Administrator is authorized to make  
15 \$10,000,000,000 in guarantees of debentures for fis-  
16 cal year 2011.”.

## 17 **SEC. 102. DEFINITIONS.**

18 Section 103 of the Small Business Investment Act  
19 of 1958 (5 U.S.C. 662) is amended as follows:

20 (1) By amending paragraph (6) to read as fol-  
21 lows:

22 “(6) the term ‘development company’ means  
23 any corporation organized in order promote eco-  
24 nomic development and the growth of small business  
25 concerns and includes companies chartered under a

1 special State law authorizing them to operate on a  
2 statewide basis;”.

3 (2) By striking “and” at the end of paragraph  
4 (18), by striking the period at the end of paragraph  
5 (19) and inserting a semicolon, and by adding at the  
6 end the following new paragraphs:

7 “(20) the term ‘certified development company’  
8 means a development company that the Adminis-  
9 trator has determined meets the criteria set forth in  
10 section 501;

11 “(21) the term ‘local governmental entity’  
12 means—

13 “(A) a State or a political subdivision of a  
14 State, or

15 “(B) a combination of political subdivisions  
16 which—

17 “(i) has been formed to promote eco-  
18 nomic or community development;

19 “(ii) is composed of representatives of  
20 the State or a political subdivision acting  
21 in their official capacity; and

22 “(iii) include an area in an adjacent  
23 State if it is part of a local economic area,  
24 a rural area or has a population deter-  
25 mined by the Administrator to be insuffi-

1           cient to support the formation of a sepa-  
2           rate development company;  
3           such term includes entities meeting the require-  
4           ments of clauses (i) through (iii), such as, but  
5           not limited to, a council of governments, re-  
6           gional development corporation, regional plan-  
7           ning commission, or economic development dis-  
8           trict;

9           “(22) the term ‘member’ means any person au-  
10          thorized to vote for a director of a corporation or the  
11          dissolution or merger of a company. For purposes of  
12          this definition, a shareholder of a for-profit corpora-  
13          tion shall be considered a member;

14          “(23) the terms ‘rural’ and ‘rural area’ shall  
15          have the same meaning as those terms are given in  
16          section 1991(a)(13)(A) of title 7, United States  
17          Code; and

18          “(24) the term ‘small manufacturer’ means a  
19          small business concern—

20                 “(A) the primary business of which is clas-  
21                 sified in sector 31, 32, or 33 of the North  
22                 American Industrial Classification System; and

23                 “(B) all of the production facilities of  
24                 which are located in the United States.”.

1                   **TITLE II—CERTIFIED**  
2                   **DEVELOPMENT COMPANIES**

3   **SEC. 201. CERTIFIED DEVELOPMENT COMPANIES.**

4           Section 501 of the Small Business Investment Act  
5 of 1958 (15 U.S.C. 695) is amended to read as follows:

6   **“SEC. 501. CERTIFIED DEVELOPMENT COMPANIES.**

7           “(a) CERTIFIED DEVELOPMENT COMPANY DEBEN-  
8 TURE AUTHORITY.—Only development companies cer-  
9 tified by the Administrator shall have the authority to  
10 issue debentures under this Act.

11          “(b) CERTIFICATION STANDARDS.—A development  
12 company shall be certified for the purposes of issuing de-  
13 bentures if the Administrator determines that it meets  
14 each of the following criteria:

15               “(1) SMALL CONCERN.—

16                       “(A) IN GENERAL.—Except as provided in  
17 subparagraph (C) of paragraph (2), the com-  
18 pany, including its affiliates, shall have no more  
19 than 200 employees.

20                       “(B) CONTROL.—Except as provided in  
21 paragraph (2) (B) or (C) the company shall not  
22 be under the control of any other concern.

23                       “(C) NOT FOR PROFIT.—The development  
24 company is organized as a not-for-profit cor-  
25 poration.

1 “(2) EXCEPTIONS.—

2 “(A) FOR PROFIT STATUS.—If a develop-  
3 ment company was chartered as a for-profit  
4 corporation and issued debentures prior to Jan-  
5 uary 1, 1987, the company shall not be re-  
6 quired to change its status to not-for-profit in  
7 order to be certified.

8 “(B) AFFILIATION GRANDFATHER.—Any  
9 company that was authorized by the Adminis-  
10 trator to issue debentures before December 31,  
11 2005, shall be eligible for certification without  
12 regard to its status as part of, or its affiliation  
13 with, any other not-for-profit corporation or  
14 local governmental entity unless that not-for-  
15 profit corporation or local governmental entity  
16 is another entity that issues debentures under  
17 this title.

18 “(C) AFFILIATION WITH LOCAL GOVERN-  
19 MENTAL ENTITIES.—Any company that was or-  
20 ganized after the date of enactment of the Job  
21 Creation and Economic Development through  
22 CDC Modernization Act of 2009 shall be eligi-  
23 ble for certification without regard to its status  
24 as part of or affiliation with any local govern-  
25 mental entity.

1           “(3) GOOD STANDING.—A development com-  
2           pany shall be in good standing and comply with all  
3           laws, in every State in which it is incorporated or  
4           authorized to conduct business.

5           “(4) MEMBERSHIP.—

6                 “(A) IN GENERAL.—The development com-  
7                 pany shall have at least 25 members.

8                 “(B) VOTING RIGHTS.—No member shall  
9                 control more than 10 percent of the total voting  
10                power in the development company.

11               “(C) RESIDENCE.—Members must be resi-  
12               dents of the State in which the development  
13               company is chartered or authorized to do busi-  
14               ness.

15               “(D) DIVERSITY.—The development com-  
16               pany must have at least one member from each  
17               of the following:

18                     “(i) A local governmental entity.

19                     “(ii) A financial institution subject to  
20                    regulation by a Federal organization be-  
21                    longing to the Federal Financial Institu-  
22                    tions Examination Council and provides  
23                    long-term fixed asset financing in the com-  
24                    mercial market.

1                   “(iii) A not-for-profit organization,  
2                   other than a development company, that is  
3                   dedicated to promoting economic growth.

4                   “(iv) A for-profit businesses, other  
5                   than a financial institution described in  
6                   clause (ii).

7                   “(E) EMPLOYMENT STATUS.—Membership  
8                   in a development company shall not be predi-  
9                   cated on employment status and an individual  
10                  who retired from or was terminated (for rea-  
11                  sons other than fraud or the commission of a  
12                  crime) from an entity described in subpara-  
13                  graph (D) shall be deemed to be from the orga-  
14                  nization described in that subparagraph.

15                  “(5) BOARD OF DIRECTORS.—

16                  “(A) IN GENERAL.—The development com-  
17                  pany’s board consists of members and each di-  
18                  rector receives a majority vote of the members  
19                  unless the development company is a for-profit  
20                  corporation in which case the board need not  
21                  consist entirely of members.

22                  “(B) BOARD REPRESENTATION.—There  
23                  shall be at least one director from not fewer  
24                  than 3 of the 4 types of organizations specified  
25                  in paragraph (4)(D) but no single type of orga-



1           nization shall have more than 50 percent rep-  
2           resentation on the board of the development  
3           company. If the development company is a for-  
4           profit corporation, financial institution rep-  
5           resentatives may make up more than 50 per-  
6           cent of the board.

7           “(C) AFFILIATED ENTITY REPRESENTA-  
8           TION RESTRICTIONS.—A development company  
9           that is described in subsection (b)(1)(C) of this  
10          section may have any or all of its board mem-  
11          bers appointed by entities affiliated with the  
12          company and may include common members  
13          who also serve on the affiliate’s board of direc-  
14          tors if the appointment of board members was  
15          exercised by an affiliate prior to December 31,  
16          2005.

17          “(D) SPECIAL RULE FOR CERTAIN DEVEL-  
18          OPMENT COMPANIES.—The board of directors  
19          for any development company issuing deben-  
20          tures before December 31, 2005, and incor-  
21          porated under a State law requiring, or which  
22          is interpreted by the State’s legal department  
23          as imposing specific requirements on, the num-  
24          ber and selection of members, board members,  
25          or both, and the rights and privileges conferred

1 by such State law, may adhere to such provi-  
2 sions.

3 “(6) PROFESSIONAL MANAGEMENT AND  
4 STAFF.—

5 “(A) IN GENERAL.—The development com-  
6 pany shall have full-time independent profes-  
7 sional management, including a chief executive  
8 officer to manage the daily operations and a  
9 full-time professional staff qualified to carry out  
10 the functions authorized under this title.

11 “(B) UTILIZATION OF STAFF FROM AF-  
12 FILIATED ENTITIES.—A development company  
13 shall not be denied certification under this sec-  
14 tion if its chief executive or full-time profes-  
15 sional staff is from an affiliated entity as de-  
16 scribed in subsection (b)(1)(C).

17 “(C) STAFF UNDER CONTRACT.—The Ad-  
18 ministrator shall not deny certification to a de-  
19 velopment company that contracts for its full  
20 time staff if one of the following conditions is  
21 met:

22 “(i) The development company is lo-  
23 cated in a rural area, obtains its staff  
24 through contract from another develop-  
25 ment company that is certified by the Ad-

1            administrator and that development company  
2            operates in the same or a contiguous  
3            State.

4            “(ii) The development company had  
5            issued debentures under this title prior to  
6            December 31, 2005, and had contracted  
7            with a for-profit business concern to pro-  
8            vide staffing and management services.

9            “(c) APPLICATIONS.—

10           “(1) DEVELOPMENT COMPANIES ISSUING DE-  
11           BENTURES BEFORE SEPTEMBER 30, 2009.—

12           “(A) SHORT FORM APPLICATION.—(i) For  
13           any development company that issued deben-  
14           tures pursuant to this title before September  
15           30, 2009, the Administrator shall develop, after  
16           an opportunity for notice and comment, no  
17           later than 90 days after the date of enactment  
18           of the Job Creation and Economic Development  
19           Through CDC Modernization Act of 2009, a  
20           short-form application that contains sufficient  
21           information for the Administrator to determine  
22           that the development company currently meets  
23           the standards set forth in subsection (b). In de-  
24           veloping such application, the Administrator  
25           shall be required to limit the amount of paper-

1 work necessary to determine whether the devel-  
2 opment company meets the standards for cer-  
3 tification and may limit the application to the  
4 filing of reports previously submitted to the Ad-  
5 ministrator.

6 “(ii) For those companies that obtain staff  
7 through contracts, the application shall include  
8 a copy of the contract.

9 “(B) CERTIFICATION DECISION.—(i) The  
10 Administrator shall certify the development  
11 company if the application demonstrates that  
12 the applicant meets the standards in subsection  
13 (b). The decision to certify or not approve the  
14 request for certification shall be made within 7  
15 business days from the date the initial submis-  
16 sion of the application is received by the Ad-  
17 ministrator. If the Administrator takes no ac-  
18 tion to approve or disapprove within 7 business  
19 days, the application for certification is deemed  
20 approved and no further action is required by  
21 the Administrator or the development company  
22 to obtain certification. If the Administrator dis-  
23 approves the application, the Administrator  
24 shall provide in writing within 3 business days  
25 the reasons for the disapproval. If such docu-

1           ment is not provided within the time specified,  
2           the application is deemed approved and no fur-  
3           ther action is required by the Administrator or  
4           the development company to obtain certifi-  
5           cation.

6           “(ii) For those development companies  
7           that submit contracts under subparagraph  
8           (A)(ii), the Administrator is limited in rejecting  
9           the application only if the Administrator finds  
10          that the entity servicing the applicant is no  
11          longer able to provide the employees or services  
12          needed by the applicant to perform the func-  
13          tions that would be authorized under this title.

14          “(C) APPLICATION RESUBMITTAL.—If the  
15          Administrator disapproves the application for  
16          certification and provides a written statement  
17          as set forth in subparagraph (B), the develop-  
18          ment company may file a new application lim-  
19          ited solely to the address the concerns of the  
20          Administrator and the certification procedures  
21          set forth in subparagraph (B) shall recom-  
22          mence.

23          “(D) APPEALS.—If the Administrator dis-  
24          approves an application in accordance with the  
25          procedures of subparagraphs (B) or (C), the

1 applicant may, within 10 calendar days after  
2 receipt of the disapproval, appeal such dis-  
3 approval. The Administrator shall conduct a  
4 hearing to determine such appeal pursuant to  
5 sections 554, 556, and 557 of title 5, United  
6 States Code, and shall issue a decision not later  
7 than 45 days after the appeal is filed. The deci-  
8 sion on appeal shall constitute final agency ac-  
9 tion for purposes of chapter 7, title 5 United  
10 States Code.

11 “(E) GRANDFATHERING.—

12 “(i) IN GENERAL.—For the period 2  
13 years after date of enactment of the Job  
14 Creation and Economic Development  
15 through CDC Modernization Act of 2009,  
16 any development company that was issuing  
17 debentures on or before the date set forth  
18 in this clause (i) shall be deemed to be a  
19 certified development company.

20 “(ii) COMPLETION OF APPLICATION  
21 PROCESS.—The procedures set forth in  
22 this paragraph for determining certifi-  
23 cation shall apply to any development com-  
24 pany meeting the qualifications of clause  
25 (i).

1           “(iii) EFFECT OF DENIAL.—The de-  
2           nial or rejection of an application for cer-  
3           tification as set forth in this subsection  
4           shall have no affect on the ability of a de-  
5           velopment company meeting the qualifica-  
6           tions in clause (i) from continuing to issue  
7           debentures during the entire two-year pe-  
8           riod established in that clause.

9           “(iv) FAILURE TO OBTAIN CERTIFI-  
10          CATION.—Any development company that  
11          fails to obtain certification in accordance  
12          with the procedures set forth in this para-  
13          graph during the period set forth in clause  
14          (i) shall be considered to be a new develop-  
15          ment company and the procedures of para-  
16          graph (2) shall apply. The authority to  
17          issue debentures shall cease for any devel-  
18          opment company covered by this subpara-  
19          graph that has failed to obtain certification  
20          from the Administrator during the time  
21          period set forth in clause (i).

22          “(F) AUTOMATIC QUALIFICATION PROVI-  
23          SION.—If the Administrator fails to implement  
24          the certification process set forth in this para-  
25          graph, any development company that was

1       issuing debentures before September 30, 2009,  
2       pursuant to this title shall be considered cer-  
3       tified until such time as the Administrator de-  
4       velops the certification procedures set forth in  
5       this paragraph.

6               “(G) SAVINGS CLAUSE.—Any action taken  
7       by a development company or the Administrator  
8       pursuant to this paragraph shall have no im-  
9       pact on any guarantee of a debenture issued  
10      prior to the date of enactment of the Job Cre-  
11      ation and Economic Development Through  
12      CDC Modernization Act of 2009.

13              “(2) APPLICATION PROCESS FOR NEW DEVEL-  
14      OPMENT COMPANIES.—

15              “(A) IN GENERAL.—For any development  
16      company that has not issued debentures prior  
17      to September 30, 2009, the Administrator shall  
18      develop no later than 180 days after the date  
19      of enactment of the Job Creation and Economic  
20      Development Through CDC Modernization Act  
21      of 2009, after an opportunity for notice and  
22      comment, an application form for certification  
23      that provides the Administrator with sufficient  
24      information to insure that the applicant meets  
25      the standards set forth in subsection (b). The



Administrator shall certify such development company or reject the application within 60 calendar days from the date the initial submission was received by the Administrator. If the Administrator rejects the application, the Administrator shall provide in writing within 7 business days after the decision, the reason for rejecting the application.

“(B) APPEALS.—A development company shall be able to appeal the disapproval of an application under the procedures set forth in paragraph (1)(D).”.

**SEC. 202. CERTIFIED DEVELOPMENT COMPANY; OPERATIONAL REQUIREMENTS.**

(a) OPERATIONAL REQUIREMENTS.—Section 502 of the Small Business Investment Act of 1958 (15 U.S.C. 696) is amended to read as follows:

**“SEC. 502. OPERATIONAL REQUIREMENTS FOR CERTIFIED DEVELOPMENT COMPANIES.**

“(a) MAINTENANCE OF STANDARDS FOR CERTIFICATION.—Any company certified pursuant to section 501 shall continue to comply with the requirements of that section to remain certified. The Administrator shall develop a reporting form, which to the extent possible, incorporates other documents and reports already kept by cer-

1   tified development companies, demonstrating their contin-  
 2   ued compliance. The form shall be developed in a manner  
 3   that the estimated time for completion shall take no more  
 4   than 2 hours.

5       “(b) ETHICS AND CONFLICT OF INTERESTS.—A cer-  
 6   tified development company, its officers, employees, and  
 7   contractors shall act ethically and avoid activities which  
 8   constitute a conflict of interest or appear to constitute a  
 9   conflict of interest. For purposes of this subsection, con-  
 10   duct that is unethical includes, but is not limited to, the  
 11   actions specified in section 120.140 of title 13, Code of  
 12   Federal Regulations as in effect on January 1, 2009.

13       “(1) BY ASSOCIATES.—An associate may not be  
 14   an officer, director, or manager of more than 1 cer-  
 15   tified development company. The term ‘associate’  
 16   shall have the same meaning given the term ‘Asso-  
 17   ciate of a CDC’ in section 120.10 of title 13, Code  
 18   of Federal Regulations, as in effect on January 1,  
 19   2009. For the purposes of this subsection, 10 per-  
 20   cent shall be substituted wherever section 120.10 of  
 21   title 13, Code of Federal Regulation uses 20 per-  
 22   cent.

23       “(2) BY ENTITIES.—Except as provided in sec-  
 24   tions 501(b)(5) and 501(b)(6), no person, sole pro-  
 25   prietorship, partnership, or corporation shall control

1 or have managerial control of more than one cer-  
2 tified development company. Control means any of  
3 the following:

4 “(A) The ability to appoint or remove  
5 members of the company or member of its  
6 board of directors.

7 “(B) The ability to modify or approve rate  
8 or fee changes affecting revenues of the cer-  
9 tified development.

10 “(C) The ability to veto, overrule, or mod-  
11 ify decisions of the certified development com-  
12 pany’s body.

13 “(D) The ability to, either directly or con-  
14 tractually, to appoint, hire, reassign, or dismiss  
15 those managers and employees responsible for  
16 the daily operations of the certified development  
17 company.

18 “(E) The ability to access the certified de-  
19 velopment company’s resources or amend its  
20 budget.

21 “(F) The ability to control another cer-  
22 tified development company pursuant to provi-  
23 sions in a contract.

1       “(c) MEETINGS.—The board of directors of the cer-  
 2       tified development company shall meet on a regular basis  
 3       to make policy decisions for the company.

4       “(d) LOAN COMMITTEES.—The board of directors of  
 5       a certified development company may use a loan com-  
 6       mittee to process loans in the State in which it operates  
 7       as well as adjacent local economic areas. Members of the  
 8       loan committee shall be residents of the certified develop-  
 9       ment company’s state of operation or the adjacent local  
 10      economic area. Such loan committees shall meet on a peri-  
 11      odic basis as set forth by the board of directors.

12      “(e) PROHIBITED CONFLICT IN PROJECT LOANS.—

13           “(1) IN GENERAL.—Certified development com-  
 14      panies shall not recommend or approve a guarantee  
 15      of a debenture that will be collateralized by property  
 16      being constructed or acquired on which an institu-  
 17      tion, as provided in section 508(c)(1)(A), will have  
 18      a first lien position.

19           “(2) EXCEPTION.—The prohibition in para-  
 20      graph (1) shall not apply to any certified develop-  
 21      ment company that was affiliated with or part of  
 22      any entity that took a first lien position between Oc-  
 23      tober 1, 2003, and September 30, 2005.

24      “(f) AFFILIATION WITH LENDERS OPERATING  
 25      UNDER SECTION 7 OF THE SMALL BUSINESS ACT.—

1           “(1) PROHIBITION.—No certified development  
2           company may invest in, or be an affiliate of, a lender  
3           who participates in the loan programs authorized in  
4           sections 7(a) and 7(c) of the Small Business Act (15  
5           U.S.C. 636).

6           “(2) EXCEPTION.—The prohibition in para-  
7           graph (1) shall not apply to any certified develop-  
8           ment company that is affiliated with an entity au-  
9           thorized by the Administrator to operate under sec-  
10          tion 7(a) of the Small Business Act if such affili-  
11          ation occurred on or before November 6, 2003.

12          “(3) CREDIT UNION AFFILIATION.—A certified  
13          development company shall not lose its status due an  
14          affiliation with an institution regulated by the Na-  
15          tional Credit Union Administration if the develop-  
16          ment company was affiliated with such an institu-  
17          tion prior to January 1, 2007.

18          “(g) SERVICING AND PACKAGING GUARANTEED  
19          LOANS.—A certified development company is authorized  
20          to prepare applications for loans under sections 7(a) or  
21          7(c) of the Small Business Act (15 U.S.C. 636), to service  
22          such loans, and to charge a reasonable fee for servicing  
23          such loans.

24          “(h) USE OF EXCESS FUNDS.—Any funds generated  
25          by a certified development company from the issuance of

1 debentures under this title, the sale of debentures in the  
2 private secondary market, or fees described in subsection  
3 (g) that remain unexpended after payment of staff, oper-  
4 ating, and overhead expenses shall be used by the certified  
5 development company for—

6 “(1) operating reserves;

7 “(2) expanding the area in which the certified  
8 development company operates through the methods  
9 authorized in section 505 (relating to multi-State  
10 operation);

11 “(3) investment in other community and local  
12 economic development activity or community devel-  
13 opment primarily in the State from which such  
14 funds were generated; or

15 “(4) investment in small business investment  
16 companies subject to the limitations in subsection  
17 (i).

18 “(i) LIMITATIONS WITH RESPECT TO SMALL BUSI-  
19 NESS INVESTMENT COMPANIES.—A certified development  
20 company shall not—

21 “(1) invest excess funds in a small business in-  
22 vestment company that the Administrator deter-  
23 mines to be capitally impaired as set forth in section  
24 107.1830 of title 13, Code of Federal Regulation, as  
25 in effect on January 1, 2009, or any successor regu-

1       lation to that regulation, but may maintain its in-  
 2       vestment in such company if such investment was  
 3       made prior to the determination of capital impair-  
 4       ment; and

5           “(2) provide a debenture under this title to a  
 6       small business concern that has financing with a  
 7       small business investment company in which the cer-  
 8       tified development company has invested excess  
 9       funds.

10       “(j) ECONOMIC DEVELOPMENT ACTIVITIES.—A com-  
 11      pany certified pursuant to this section shall carry out each  
 12      of the following economic development activities that cre-  
 13      ate or preserve jobs in urban and rural areas:

14           “(1) The company shall provide long-term fi-  
 15      nancing to small business concerns through deben-  
 16      tures described in section 506.

17           “(2) The company shall operate any other pro-  
 18      gram to assist small business concerns or commu-  
 19      nities that promote local economic development and  
 20      job creation or preservation.

21       “(k) RESTRICTIONS ON ASSISTANCE.—

22           “(1) IN GENERAL.—After the date of enact-  
 23      ment of the Job Creation and Economic Develop-  
 24      ment Through CDC Modernization Act of 2009, no  
 25      certified development company may accept funding

1 from any source, including any Federal agency (as  
2 that term is defined in section 551 of title 5, United  
3 States Code) if the source imposes—

4 “(A) conditions on the types of small busi-  
5 ness concerns that a certified development com-  
6 pany may provide assistance to under this title;  
7 or

8 “(B) conditions or requirements, directly  
9 or indirectly, upon any small business concern  
10 receiving assistance under this title.

11 “(2) EXCEPTION.—The conditions of subpara-  
12 graphs (A) and (B) of paragraph (1) shall not apply  
13 if the source provides all of the financing that will  
14 be provided by the certified development company to  
15 the small business concern, provided further that  
16 any conditions or restrictions are limited solely to  
17 the financing provided by the source of funding.

18 “(l) REVOCATION AND SUSPENSION.—The Adminis-  
19 trator may suspend or revoke a certified development com-  
20 pany’s status if the Administrator determines, after a  
21 hearing on the record as set forth in section 554, 556,  
22 and 557 of title 5, United States Code, that the certified  
23 development company no longer—

24 “(1) meets the eligibility criteria established  
25 under section 501;



1 “(2) satisfies the operational standards in this  
2 section; or

3 “(3) complies with the Administrator’s rules,  
4 regulations, or provisions of law.

5 “(m) EFFECT OF SUSPENSION OR REVOCATION.—A  
6 suspension or revocation under subsection (l) shall not af-  
7 fect any outstanding debenture guarantee.”.

8 **SEC. 203. ACCREDITED LENDERS PROGRAM.**

9 Section 503 of the Small Business Investment of  
10 1958 (15 U.S.C. 697) is amended to read as follows:

11 **“SEC. 503. ACCREDITED LENDERS PROGRAM.**

12 “(a) ESTABLISHMENT.—A certified development  
13 company may apply for status to become an accredited  
14 certified development company if it meets the operational  
15 standards of section 502 and the criteria in subsection (b).

16 “(1) APPLICATION.—The Administrator shall,  
17 after opportunity for notice and comment, develop  
18 an application for certified development companies  
19 seeking to become accredited certified development  
20 companies.

21 “(2) PROCESSING OF APPLICATION.—The Ad-  
22 ministrator shall make a determination within 30  
23 days after a complete application has been filed by  
24 the certified development company.

1           “(3) REAPPLICATION.—If the Administrator re-  
2       jects the application, the Administrator shall provide  
3       in writing the reasons for the rejection. Any certified  
4       development company may reapply which will recom-  
5       mence the processing time limits set forth in para-  
6       graph (2), and such reapplication shall be limited to  
7       addressing the reasons for rejection. If the Adminis-  
8       trator rejects a second application, that shall be con-  
9       sidered final agency action for purposes of Chapter  
10      7 of title 5, United States Code.

11       “(b) STANDARDS FOR ACCREDITED CERTIFIED DE-  
12      VELOPMENT COMPANY PROGRAM.—The Administrator  
13      shall designate a certified development company as accred-  
14      ited if it meets the following standards:

15           “(1) has been a certified development company  
16       for not less than the preceding 12 months and has  
17       issued debentures as authorized under this title dur-  
18       ing that time period;

19           “(2) has well-trained, qualified personnel who  
20       are knowledgeable in the lending policies and proce-  
21       dures for certified development companies;

22           “(3) has the ability to process, close, and serv-  
23       ice the loan issued under this title;

1           “(4) has a loss rate on the company’s debentures that is reasonable and acceptable to the Administrator;

2           “(5) has a history of submitting to the Administrator complete and accurate debenture guaranty application packages; and

3           “(6) has the ability to serve small business credit needs for financing plant and equipment as a certified development company.

4           “(c) EXPEDITED PROCESSING OF GUARANTEE APPLICATIONS.—The Administrator shall develop an expedited procedure for processing a guarantee application or servicing action submitted by an accredited certified development company. For purposes of this subsection, an expedited procedure is one that takes at least two business days less than the processing performed for certified development companies that have not been accredited.

5           “(d) SUSPENSION OR REVOCATION OF ACCREDITED STATUS.—The Administrator may suspend or revoke a certified development company’s accredited status if the Administrator determines, after a hearing on the record as set forth in section 554, 556, and 557 of title 5, United States Code, that the certified development company no longer meets the eligibility criteria established under this section (which shall not include a time limit on the term

1 of the certified development company’s accredited status)  
 2 or failed to adhere to the Administrator’s rules, regula-  
 3 tions, or is violating some other provision of law. Such  
 4 suspension or revocation shall have no effect on the devel-  
 5 opment company’s status as certified.

6 “(e) EFFECT OF SUSPENSION OR REVOCATION ON  
 7 EXISTING GUARANTEES.—A suspension or revocation of  
 8 accredited status shall not affect any outstanding debent-  
 9 ure guarantee.

10 “(f) GRANDFATHER PROVISION.—Any certified de-  
 11 velopment company that was accredited by the date of en-  
 12 actment of the Job Creation and Economic Development  
 13 Through CDC Modernization Act shall remain accredited  
 14 for 24 months after that date. If the certified development  
 15 company does not have an application for accreditation ap-  
 16 proved by the Administrator within the 24 months, its ac-  
 17 creditation standard shall lapse.

18 “(g) AUTOMATIC QUALIFICATION.—

19 “(1) IN GENERAL.—Until the Administrator de-  
 20 velops procedures for granting accredited status, any  
 21 certified development company that was accredited  
 22 as of the date of enactment of the Job Creation and  
 23 Economic Development through CDC Modernization  
 24 Act of 2009 shall be deemed to be accredited.

1           “(2) APPLICATIONS.—Any certified develop-  
2           ment company that satisfies the provision of para-  
3           graph (1) shall have 24 months in which to submit  
4           the application established by this section for accred-  
5           ited status.

6           “(3) EFFECT WHILE APPLICATION PENDING.—  
7           The denial or rejection of an application for accred-  
8           ited status as set forth in this section shall have no  
9           affect on the ability of a development company that  
10          meets the standard set forth in paragraph (1) from  
11          maintaining its status during the 24 months speci-  
12          fied in this subsection.

13          “(h) PROMULGATION OF ACCREDITING STAND-  
14          ARDS.—The Administrator shall develop standards for ac-  
15          crediting, suspension and revocation under the program  
16          established by this section only after notice and an oppor-  
17          tunity for comment as set forth in section 553(b) of title  
18          5, United States Code. After the development of such  
19          standards, the Administrator shall publish such standards  
20          in the Code of Federal Regulations.

21          “(i) RULE OF CONSTRUCTION.—Any reference to the  
22          term ‘accredited lender’ in any provision of law enacted,  
23          or any regulation adopted, prior to the enactment of the  
24          Job Creation and Economic Development Through CDC  
25          Modernization Act of 2009 shall be deemed to be a ref-

1 erence to the term ‘accredited certified development com-  
 2 pany’.”.

3 **SEC. 204. PREMIER CERTIFIED LENDER PROGRAM.**

4 Section 504 of the Small Business Investment Act  
 5 of 1958 (15 U.S.C. 697a) is amended to read as follows:

6 **“SEC. 504. PREMIER CERTIFIED LENDER PROGRAM.**

7 “(a) ESTABLISHMENT.—A certified development  
 8 company accredited under section 503 may apply for sta-  
 9 tus to become a premier certified development company.

10 “(1) APPLICATION.—The Administrator shall,  
 11 after opportunity for notice and comment, develop  
 12 an application for accredited certified development  
 13 companies seeking to become premier certified devel-  
 14 opment companies.

15 “(2) PROCESSING OF APPLICATION.—The Ad-  
 16 ministrator shall make a determination within 60  
 17 days after a complete application has been filed by  
 18 an accredited certified development company.

19 “(3) REAPPLICATION.—If the Administrator re-  
 20 jects the application, the Administrator shall provide  
 21 in writing the reasons for the rejection. Any accred-  
 22 ited certified development company may reapply  
 23 which will recommence the processing time limits set  
 24 forth in paragraph (2), and such reapplication shall  
 25 be limited to addressing the reasons for rejection. If

1 the Administrator rejects a second application, that  
2 shall be considered final agency action for purposes  
3 of chapter 7 of title 5, United States Code.

4 “(b) STANDARDS FOR OBTAINING PREMIER CER-  
5 TIFIED DEVELOPMENT COMPANY STATUS.—The Admin-  
6 istrator shall designate an accredited certified develop-  
7 ment company as a premier certified development com-  
8 pany if the application submitted pursuant to subsection  
9 (a) demonstrates that the accredited certified development  
10 company meets the following standards:

11 “(1) Has been an accredited certified develop-  
12 ment company for at least 12 months.

13 “(2) Has submitted to the Administrator ade-  
14 quately analyzed debenture guarantee applications.

15 “(3) Has closed, in a proper manner following  
16 the Administrator regulations, loans under this title.

17 “(4) Has serviced its loan portfolio in accord-  
18 ance with the standards set by the Administrator.

19 “(5) Has established a loan loss reserve estab-  
20 lished in accordance with this section that the Ad-  
21 ministrator determines is sufficient to meet its obli-  
22 gations to protect the Federal Government from the  
23 risk of loss on each debenture guaranteed under this  
24 section.

1           “(6) Has agreed, as part of the application and  
2           in order to protect the Federal Government against  
3           the risk of loss, to the following:

4                   “(A) on account of a debenture, the pro-  
5                   ceeds of which were used to fund a loan ap-  
6                   proved prior to the date of enactment of the  
7                   Job Creation and Economic Development  
8                   through CDC Modernization Act of 2009,  
9                   agrees to reimburse the Administrator for 10  
10                  percent of any loss sustained by the Adminis-  
11                  trator as a result of a default by the company  
12                  in the payment of principal or interest on a de-  
13                  benture issued by such company and guaran-  
14                  teed by the Administrator;

15                   “(B) on account of a debenture, the pro-  
16                   ceeds of which were used to fund a loan ap-  
17                   proved prior to the date of enactment of the  
18                   Job Creation and Economic Development  
19                   through CDC Modernization Act of 2009 and  
20                   which were issued during the period in which  
21                   the company had made a selection pursuant to  
22                   section 508(c)(7) of the Small Business Invest-  
23                   ment Act of 1958, as in effect on the day before  
24                   such date of enactment, agrees to reimburse the  
25                   Administrator for 15 percent of any loss sus-



1           tained by the Administrator as a result of a de-  
2           fault by the company in the payment of prin-  
3           cipal or interest on a debenture issued by such  
4           company and guaranteed by the Administrator;  
5           or

6           “(C) on account of a debenture, the pro-  
7           ceeds of which are used to fund a loan approved  
8           on or after the date of enactment of the Job  
9           Creation and Economic Development through  
10          CDC Modernization Act of 2009, upon closing,  
11          pay to the Administrator a one-time participa-  
12          tion fee in the amount equal to the higher of  
13          the following:

14               “(i) 0.25 percent of the amount of the  
15               debenture.

16               “(ii) A percent of the amount of the  
17               debenture equal to 10 percent of the  
18               amount of the company’s historic loss rate  
19               on debentures guaranteed under this sec-  
20               tion as determined by the Administrator.  
21               The rate specified by this clause shall be  
22               determined annually based upon the com-  
23               pany’s loan losses as of close of business  
24               on June 30th and notice of the determina-  
25               tion shall be provided to each company not

1 later than August 31. Such rate shall be  
2 applicable to loans approved during the fis-  
3 cal year commencing after the determina-  
4 tion is made and shall expire and have no  
5 further application after the end of such  
6 fiscal year. If no timely determination has  
7 been made prior to the commencement of  
8 a fiscal year, including the year of enact-  
9 ment of the Job Creation and Economic  
10 Development through CDC Modernization  
11 Act of 2009, one may be made after the  
12 commencement and it shall be applicable  
13 to loans approved during the balance of  
14 such fiscal year commencing 30 days after  
15 notification to the development company  
16 involved.

17 “(c) SUSPENSION OR REVOCATION OF PREMIER STA-  
18 TUS.—The Administrator may suspend or revoke an ac-  
19 credited certified development company’s premier status  
20 if the Administrator determines, after a hearing on the  
21 record as set forth in section 554, 556, and 557 of title  
22 5, United States Code, that the accredited certified devel-  
23 opment company no longer meets the eligibility criteria for  
24 premier status as established under this section or failed  
25 to adhere to the Administrator’s rules, regulations, or is

1 violating some other provision of law. Such revocation or  
2 suspension shall have no effect on its status as an accredited  
3 certified development company.

4 “(d) LOAN LOSS RESERVE.—

5 “(1) ASSETS.—Each loan loss reserve maintained by the premier  
6 certified development company for loans made pursuant to the authority in  
7 subsection (g)(1) shall be comprised of—

9 “(A) segregated funds on deposit in an account or accounts with a  
10 federally insured depository institution or institutions selected by  
11 the company, subject to a collateral assignment in favor of, and in a  
12 format acceptable to, the Administrator that shall amount to 10 percent  
13 of the company’s exposure as determined pursuant to subsection  
14 (b)(6);

17 “(B) irrevocable letter or letters of credit, with a collateral  
18 assignment in favor of, and a commercially reasonable format acceptable  
19 to, the Administrator; or

21 “(C) any combination of the assets described in subparagraphs  
22 (A) and (B).

23 “(2) CONTRIBUTIONS.—The company shall  
24 make contributions to the loss reserve, either cash or

1 letters of credit as provided above, in the following  
2 amounts and at the following intervals:

3 “(A) 50 percent when a debenture is  
4 closed.

5 “(B) 25 percent additional not later than  
6 1 year after a debenture is closed.

7 “(C) 25 percent additional not later than  
8 2 years after a debenture is closed.

9 “(3) REPLENISHMENT.—If a loss has been sus-  
10 tained by the Administrator, any portion of the loss  
11 reserve, and other funds provided by the premier  
12 certified development company as necessary, may be  
13 used to reimburse the Administrator for the premier  
14 certified development company’s share of the loss as  
15 provided for in subsection (b)(6). If the premier cer-  
16 tified development company utilizes the reserve, it  
17 shall, within 30 calendar days, replace an equivalent  
18 amount of funds.

19 “(4) DISBURSEMENTS.—

20 “(A) IN GENERAL.—The Administrator  
21 shall allow the premier certified development  
22 company to withdraw from the loss reserve  
23 amounts attributable to any debenture that has  
24 been repaid.

1           “(B) REDUCTION.—The Administrator  
 2           shall allow the premier certified development to  
 3           withdraw from the loss reserve such amounts as  
 4           are in excess of 1 percent of the aggregate out-  
 5           standing balances of debentures to which such  
 6           loss reserve relates. The reduction authorized  
 7           by this subparagraph shall not apply with re-  
 8           spect to any debenture before 100 percent of  
 9           the contribution described in paragraph (2)  
 10          with respect to such debenture has been made.

11          “(C) RULE OF CONSTRUCTION.—The pro-  
 12          vision contained in subparagraph (B) shall be  
 13          read as if enacted prior to a date 2 years and  
 14          90 days after the date of enactment of the Job  
 15          Creation and Economic Development through  
 16          CDC Modernization Act of 2009.

17          “(e) BUREAU OF PREMIER CERTIFIED DEVELOP-  
 18          MENT COMPANY LENDER OVERSIGHT.—

19          “(1) IN GENERAL.—There is hereby established  
 20          a Bureau of Premier Certified Development Com-  
 21          pany Lender Oversight in the Office of Lender Over-  
 22          sight at the United States Small Business Adminis-  
 23          tration which shall have responsibility and capability  
 24          for carrying out oversight of premier certified devel-

1        opment companies and such other responsibilities as  
2        the Administrator designates.

3            “(2) ANNUAL REVIEW.—The Bureau estab-  
4        lished in paragraph (1) annually shall review the fi-  
5        nancing made by each premier certified development  
6        company. Such review shall include the premier cer-  
7        tified development company’s credit decisions and  
8        general compliance with the eligibility requirements  
9        for each financing approved as a result of its status  
10       as a premier certified development company.

11           “(3) RANDOM AUDITS.—The Bureau shall de-  
12        velop and implement a method for sampling the de-  
13        bentures issued by premier certified development  
14        companies. Such sampling shall be similar to the  
15        random file audits of development companies that  
16        utilize the Abridged Submission Method described in  
17        chapter 4 of subpart C of Standard Operating Pro-  
18        cedure 50 10 (5)(A) as was in effect on March 2,  
19        2009.

20           “(4) REVIEW OF LENDERS PROVIDING SENIOR  
21        FINANCING.—

22            “(A) CALCULATION OF LOAN LOSS  
23        RATE.—The Bureau shall periodically calculate  
24        the loss rate of all debentures approved under  
25        this section and shall calculate a loss rate on

1 the basis of the total debentures attributable to  
2 projects approved by premier certified develop-  
3 ment companies in which each lender is a par-  
4 ticipating lender.

5 “(B) NOTIFICATION.—If the Bureau deter-  
6 mines that the loss rate on debentures involving  
7 an individual lender exceeds the average for all  
8 debentures approved under this section, it shall  
9 advise the Administrator.

10 “(5) USE OF REVIEWS AND AUDITS.—The Ad-  
11 ministrator shall consider the findings under para-  
12 graphs (2), (3), and (4) in carrying out the respon-  
13 sibilities under subsection (h).

14 “(f) SALE OF CERTAIN DEFAULTED LOANS.—

15 “(1) NOTICE.—If, upon default in repayment,  
16 the Administrator acquires a debenture issued by a  
17 premier certified development company and identi-  
18 fies such loan for inclusion in a bulk asset sale of  
19 defaulted or repurchased loans or other financing, it  
20 shall give prior notice thereof to any premier cer-  
21 tified development company which has a contingent  
22 liability under this section. The notice shall be given  
23 to the premier certified development company as  
24 soon as possible after the financing is identified, but  
25 not less than 90 days before the date the Adminis-

1       trator first makes any records on such financing  
2       available for examination by prospective purchasers  
3       prior to its offering in a package of loans for bulk  
4       sale.

5           “(2) LIMITATIONS.—The Administrator shall  
6       not offer any loan described in paragraph (1) as  
7       part of a bulk sale unless it—

8           “(A) provides prospective purchasers with  
9       the opportunity to examine the Small Business  
10      Administration’s records with respect to such  
11      loan; and

12          “(B) provides the notice required by para-  
13      graph (1).

14      “(g) LOAN APPROVAL AUTHORITY.—

15          “(1) IN GENERAL.—A premier certified develop-  
16      ment company may, under conditions determined by  
17      the Administrator in regulations published in the  
18      Code of Federal Regulations, issue guarantees on  
19      debentures, approve, authorize, close, service, fore-  
20      close, litigate (except that the Administrator may  
21      monitor conduct of any such litigation), and liq-  
22      uidate loans that are funded with proceeds of a de-  
23      benture issued by a premier certified development  
24      company unless the Administrator advises the com-  
25      pany that loans involving a specific institutional



1 lender are to be submitted to the Administrator for  
2 further consideration, and approval by the Adminis-  
3 trator.

4 “(2) PROGRAM GOALS.—Each premier certified  
5 development company shall establish a goal of proc-  
6 essing no less than 50 percent of the applications for  
7 assistance under this title that the premier certified  
8 development company receives. Failure to meet this  
9 goal shall have no affect on the company’s status as  
10 a premier certified development company under this  
11 section.

12 “(3) SCOPE OF REVIEW.—The approval of a  
13 loan and guarantee of a debenture by a premier cer-  
14 tified development company shall be subject to final  
15 approval as to the eligibility of any guarantee by the  
16 Administrator as set forth in section 506, but such  
17 final approval shall not include review of decisions  
18 by the premier certified development company in-  
19 volving creditworthiness, loan closing, or compliance  
20 with legal requirements imposed by law or regula-  
21 tion.

22 “(h) SUSPENSION OR REVOCATION.—The Adminis-  
23 trator may suspend or revoke an accredited certified devel-  
24 opment company’s premier status if the Administrator de-  
25 termines, after a hearing on the record as set forth in sec-

tion 554, 556, and 557 of title 5, United States Code, that the accredited certified development company no longer meets the eligibility criteria established under this section, fails to maintain adequate loan loss reserves mandated in this section even if it meets the other eligibility requirements for premier status, or violates the Administrator’s rules, regulations, or some other provision of law. The Administrator shall consider the review of the premier certified development company conducted pursuant to subsection (e) in determining whether to suspend or revoke an accredited development company’s premier status. Such suspension or revocation shall have no effect on the development company’s status as an accredited certified development company.

“(i) EFFECT OF SUSPENSION OR REVOCATION.—A suspension or revocation of premier status shall not affect any outstanding debenture guarantee.

“(j) RULE OF CONSTRUCTION.—Any reference to the term ‘premier certified lender’ or ‘PCL’ in legislation enacted, or regulations adopted, prior to the enactment of the Job Creation and Economic Development Through CDC Modernization Act of 2009 shall be deemed to be a reference to the term ‘premier certified development company’.”.

1   **SEC. 205. MULTI STATE OPERATIONS.**

2       Section 505 of the Small Business Investment Act  
3 of 1958 (15 U.S.C. 697b) is amended to read as follows:

4   **“SEC. 505. MULTI STATE OPERATIONS.**

5       “(a) AUTHORIZATION.—The Administrator shall per-  
6 mit an accredited or premier certified development com-  
7 pany to make loans or issue debentures in any State that  
8 is contiguous to the State of incorporation of that com-  
9 pany only if the company—

10           “(1) has members, from each of the States in  
11 which it operates with not fewer than 25 members  
12 who reside in such States;

13           “(2) has a board of directors that contains not  
14 fewer than 2 members from each State in which the  
15 company makes loans and issues debentures and are  
16 residents of that State;

17           “(3) maintains a separate loan committee to  
18 process loans in each expansion State and the mem-  
19 bers of the loan committee are solely residents of the  
20 expansion State; and

21           “(4) files an application developed by the Ad-  
22 ministrator which provides—

23                   “(A) notice of the intention to make loans  
24 in multiple States;

25                   “(B) specifies the States in which the com-  
26 pany intends to make loans;

1                   “(C) a list of members in each expansion  
2                   State; and

3                   “(D) a detailed statement on how the com-  
4                   pany will comply with the requirements of this  
5                   subsection.

6           “(b) LOAN COMMITTEES.—The requirements of  
7   paragraph (3) of subsection (a) shall not require a devel-  
8   opment company to establish a loan committee in its State  
9   of incorporation or in a local economic area outside the  
10   State of incorporation unless such area is part of an ex-  
11   pansion State.

12          “(c) REVIEW.—

13               “(1) IN GENERAL.—The Administrator shall re-  
14   view each application for expansion under subsection  
15   (a), but such review shall be limited to that informa-  
16   tion needed to determine whether the company will  
17   comply with the requirements of subsection (a).

18               “(2) DEADLINE FOR DECISION.—The Adminis-  
19   trator shall make a decision on each application  
20   under subsection (a) within 15 calendar days after  
21   the receipt of the application. If no such decision is  
22   granted, the application is deemed to be approved  
23   and no further action is required by the applicant or  
24   the Administrator for the company to expand into  
25   the States specified in the application.

1           “(3) APPLICATION RESUBMITTAL.—If the Ad-  
2           ministrators rejects the application for expansion, the  
3           Administrator shall provide in writing the reasons  
4           for denial within 10 calendar days of the decision.  
5           The applicant then may resubmit the application but  
6           the review of such resubmitted applications will be  
7           limited only to the areas in which the Administrator  
8           found the original application deficient. The dead-  
9           lines in paragraph (2) shall apply to resubmitted ap-  
10          plications.

11          “(4) APPEAL.—If a resubmitted application is  
12          denied, the applicant may, within 10 calendar days  
13          after receipt of the disapproval, appeal such dis-  
14          approval. The Administrator shall conduct a hearing  
15          to determine such appeal pursuant to sections 554,  
16          556, and 557 of title 5, United States Code, and  
17          shall issue a decisions not later than 45 days after  
18          the appeal is filed. The decision on appeal shall con-  
19          stitute final agency action for purposes of chapter 7,  
20          title 5 United States Code.

21          “(d) FAILURE TO DEVELOP APPLICATION.—If the  
22          Administrator fails to develop an application as required  
23          in subsection (a)(4) within 60 days of the enactment of  
24          Job Creation and Economic Development Through CDC  
25          Modernization Act of 2009, an accredited or premier cer-

1   tified development company only need submit the informa-  
 2   tion required in subsection (a) to the Administrator to be  
 3   deemed eligible to commence operations authorized by this  
 4   section. Such eligibility shall not be terminated if the Ad-  
 5   ministrator develops an application after the 60-day period  
 6   set forth in this subsection.

7       “(e) AGGREGATE ACCOUNTING.—An accredited or  
 8   premier certified development company authorized to op-  
 9   erate in multiple States pursuant to this section may  
 10   maintain an aggregate accounting of all revenue and ex-  
 11   penses of the company for purposes of this title.

12       “(f) LOCAL JOB CREATION REQUIREMENTS.—

13           “(1) IN GENERAL.—Any company making loans  
 14   in multiple States as authorized in this section shall  
 15   not count jobs created or retained in one State to-  
 16   wards any applicable job creation or retention re-  
 17   quirements mandated by this title in another State.

18           “(2) APPLICABILITY.—Any company operating  
 19   under the authority of this section shall be required  
 20   to meet any job creation or retention requirement of  
 21   this title on the date that is 2 years after the cer-  
 22   tified development company closed its first loan in  
 23   its new State of operation.

24       “(g) CONTIGUOUS STATES.—For the purposes of this  
 25   section, the States of Alaska and Hawaii shall be deemed

1 to be contiguous to any State abutting the Pacific Ocean.  
 2 Territories of the United States located in the Pacific  
 3 Ocean shall be deemed to be contiguous to any State abut-  
 4 ting the Pacific Ocean, including Alaska and Hawaii, and  
 5 territories of the United States located in the Caribbean  
 6 Sea shall be deemed contiguous to any State abutting the  
 7 Gulf of Mexico.

8 “(h) EXEMPTION FOR LOCAL ECONOMIC AREAS.—  
 9 Except as provided in subsection (a)(3) with respect to  
 10 loan committees, any certified, accredited, or premier de-  
 11 velopment company or applicant operating in a local eco-  
 12 nomic development area that crosses the border of another  
 13 State shall not be considered to be operating under the  
 14 provisions of this section and shall not be required to com-  
 15 ply with the requirements of this section for multi-State  
 16 operation.”.

17 **SEC. 206. GUARANTY OF DEBENTURES.**

18 Section 506 of the Small Business Investment Act  
 19 of 1958 (15 U.S.C. 697c) is amended to read as follows:

20 **“SEC. 506. GUARANTY OF DEBENTURES.**

21 “(a) AUTHORITY TO GUARANTEE.—Except as pro-  
 22 vided in subsection (c), the Administrator may guarantee  
 23 the timely payment of all principal and interest as sched-  
 24 uled on any debenture issued by a certified development  
 25 company.

1       “(b) TERMS AND CONDITIONS OF THE GUAR-  
2 ANTEE.—Such guarantees may be made on such terms  
3 and conditions as the Administrator may by regulation,  
4 published in the Code of Federal Regulations, determine  
5 to be appropriate, except that the Administrator shall not  
6 decline to issue such guarantee when the ownership inter-  
7 ests of the small business concern and the ownership inter-  
8 ests of the property to be financed with the proceeds of  
9 the loan made pursuant to subsection (e)(1) are not iden-  
10 tical because one or more of the following classes of rel-  
11 atives have an ownership interest in either the small busi-  
12 ness concern or the property: father, mother, son, daugh-  
13 ter, wife, husband, brother, or sister, if the Administrator  
14 or his designee has determined on a case-by-case basis  
15 that such ownership interest, such guarantee, and the pro-  
16 ceeds of such loan, will substantially benefit the small  
17 business concern.

18       “(c) FULL FAITH AND CREDIT.—The full faith and  
19 credit of the United States is pledged to the payment of  
20 all amounts guaranteed under this section.

21       “(d) SUBORDINATION.—Any debenture issued by a  
22 certified development company with respect to which a  
23 guarantee is made under this section may be subordinated  
24 by the Administrator to any other debenture, promissory  
25 note, or other debt or obligation of such company.



1       “(e) STANDARDS FOR ADMINISTRATOR GUARAN-  
2 TEES.—No guarantee may be made with respect to any  
3 debenture under this section unless—

4           “(1) the debenture is issued for the purpose of  
5 making one or more loans to small business concerns  
6 the proceeds of which shall be used for the purposes  
7 set forth in section 507;

8           “(2) the interest rate on such debentures is not  
9 less than the rate of interest determined by the Sec-  
10 retary of the Treasury for purposes of section  
11 303(b) of the Small Business Investment Act of  
12 1958;

13          “(3) the aggregate amount of such debenture  
14 does not exceed the amount of the loans to be made  
15 from the proceeds of such debenture plus, at the  
16 election of the borrower, other amounts attributable  
17 to the administrative and closing costs of such loans,  
18 except for the attorney fees of the borrower;

19          “(4) the amount of any loan to be made from  
20 such proceeds does not exceed an amount equal to  
21 50 percent of the cost of the project with respect to  
22 which such loan is made;

23          “(5) the Administrator, except to the extent  
24 provided in section 504 with respect to premier cer-

1       tified development companies, approves each loan to  
2       be made from such proceeds; and

3               “(6) with respect to each loan made from the  
4       proceeds of such debenture, the Administrator—

5               “(A) assesses and collects a fee, which  
6       shall be payable by the borrower, in an amount  
7       established annually by the Administration,  
8       which amount shall not exceed—

9               “(i) the lesser of—

10               “(I) 0.9375 percent per year of  
11       the outstanding balance of the loan;  
12       or

13               “(II) the minimum amount nec-  
14       essary to reduce the cost (as defined  
15       in section 502 of the Federal Credit  
16       Reform Act of 1990) to the Adminis-  
17       trator of purchasing and guaranteeing  
18       debentures under this title to zero;  
19       and

20               “(ii) 50 percent of the amount estab-  
21       lished under clause (i) in the case of a loan  
22       made during the 2-year period beginning  
23       on October 1, 2002, for the life of the  
24       loan; and

1           “(B) uses the proceeds of such fee to offset  
2           the cost (as such term is defined in section 502  
3           of the Federal Credit Reform Act of 1990) to  
4           the Administrator of making guarantees under  
5           this section.

6           “(f) INTEREST RATES ON COMMERCIAL LOANS.—  
7   Notwithstanding the provisions of the constitution or laws  
8   of any State limiting the rate or amount of interest which  
9   may be charged, taken, received, or reserved, the max-  
10   imum legal rate of interest on any commercial loan which  
11   funds any portion of the cost of the project financed pur-  
12   suant to this title which is not funded by a debenture  
13   guaranteed under this section shall be a rate which is es-  
14   tablished by the Administrator who shall publish such rate  
15   quarterly in, at a minimum, the Federal Register and on  
16   the Administration’s website.

17          “(g) DEBENTURE REPAYMENT.—Any debenture that  
18   is issued under this section shall provide for the payment  
19   of principal and interest on a semiannual basis.

20          “(h) CHARGES FOR ADMINISTRATOR’S EXPENSES.—  
21   The Administrator may impose an additional charge for  
22   administrative expenses with respect to each debenture for  
23   which payment of principal and interest is guaranteed  
24   under this section. Such administrative expenses may in-  
25   clude—

1           “(1) development company fees for processing,  
2           closing, servicing, late payment or loan assumption;

3           “(2) agent or trustee fees for central servicing,  
4           underwriters, or debenture funding; and

5           “(3) fees charged by the Administrator for the  
6           debenture guaranty and from the certified develop-  
7           ment company to reduce the subsidy cost.

8           “(i) PARTICIPATION FEE.—The Administrator shall  
9           collect a one-time fee in an amount equal to 50 basis  
10          points on the total participation in any project of any  
11          State or local government, bank, other financial institu-  
12          tion, or foundation or not-for-profit institution. Such fee  
13          shall be imposed only when the participation of the entity  
14          described in the previous sentence will occupy a senior  
15          credit position to that of the development company. All  
16          proceeds of the fee shall be used to offset the cost (as  
17          that term is defined in section 502 of the Credit Reform  
18          Act of 1990) to the Administrator of making guarantees  
19          under this section.

20          “(j) CERTIFIED DEVELOPMENT COMPANY FEE.—  
21          The Administrator shall collect annually from each devel-  
22          opment company a fee of 0.125 percent of the outstanding  
23          principal balance of any guaranteed debenture authorized  
24          by the Administrator after September 30, 1996. Such fee  
25          shall be derived from the servicing fees collected by the

1 certified development company pursuant to regulation,  
2 and shall not be derived from any additional fees imposed  
3 on small business concerns. All proceeds of the fee shall  
4 be used to offset the cost (as that term is defined in sec-  
5 tion 502 of the Credit Reform Act of 1990) to the Admin-  
6 istrator of making guarantees under this section.

7 “(k) EFFECTIVE DATE.—The fees authorized by this  
8 section shall apply to any financing approved under this  
9 title on or after October 1, 1996.

10 “(l) CALCULATION OF SUBSIDY RATE.—All fees, in-  
11 terest, and profits received and retained by the Adminis-  
12 trator under this section shall be included in the calcula-  
13 tions made by the Director of the Office of Management  
14 and Budget to offset the cost (as that term is defined in  
15 section 502 of the Federal Credit Reform Act of 1990)  
16 to the Administrator of purchasing and guaranteeing de-  
17 bentures under this title.

18 “(m) ACTIONS UPON DEFAULT.—

19 “(1) INITIAL ACTIONS.—Not later than the  
20 45th day after the date on which a payment on a  
21 loan funded through a debenture guaranteed under  
22 this section is due and not received, the Adminis-  
23 trator shall—

24 “(A) take all necessary steps to bring such  
25 loan current; or

1           “(B) implement a formal written deferral  
2           agreement.

3           “(2) PURCHASE OR ACCELERATION OF DEBEN-  
4           TURE.—Not later than the 65th day after the date  
5           on which a payment on a loan described in para-  
6           graph (1) is due and not received, and absent a for-  
7           mal written deferral agreement, the Administrator  
8           shall take all necessary steps to purchase or accel-  
9           erate the debenture.

10          “(3) PREPAYMENT PENALTIES.—With respect  
11          to the portion of any project derived from funds not  
12          provided by a debenture issued by a certified devel-  
13          opment company or borrower, the Administrator—

14               “(A) shall negotiate the elimination of any  
15               prepayment penalties or late fees on defaulted  
16               loans made prior to September 30, 1996;

17               “(B) shall not pay any prepayment penalty  
18               or late fee on the default based purchase of  
19               loans issued after September 30, 1996; and

20               “(C) shall not pay default interest rate  
21               higher than the interest rate on the note prior  
22               to the date of default for any project financed  
23               after September 30, 1996.

24          “(4) COLLECTION AND SERVICING.—

1           “(A) IN GENERAL.—In the event of the de-  
2           fault of any loan and the repurchase of a de-  
3           benture guaranteed by the Administrator under  
4           this title, the Administrator shall continue to  
5           delegate to the central servicing agent that was  
6           contracted for that service as of January 1,  
7           2009, or successor contractor the authority to  
8           collect and disburse all funds or payments re-  
9           ceived on such defaulted loans, including pay-  
10          ments from guarantors or on notes in com-  
11          promise of the original note. The central serv-  
12          icing agent shall continue to provide an ac-  
13          counting of income and expenses for any such  
14          loan on the same basis it does for any other  
15          loan issued under this title. The central serv-  
16          icing agent shall make the accounting of income  
17          and expenses and reports thereon available as  
18          requested by the certified development company  
19          that issued the debenture or the Administrator.

20          “(B) EFFECTIVE DATE.—The require-  
21          ments of subparagraph (A) shall become effec-  
22          tive 180 days after the date of enactment of the  
23          Job Creation and Economic Development  
24          Through CDC Modernization Act of 2009.”.

1 **SEC. 207. ECONOMIC DEVELOPMENT THROUGH DEBEN-**  
2 **TURES.**

3 Section 507 of the Small Business Investment Act  
4 of 1958 (15 U.S.C. 697d) is amended to read as follows:

5 **“SEC. 507 ECONOMIC DEVELOPMENT AND DEBENTURES.**

6 “(a) IN GENERAL.—A certified development company  
7 shall be prohibited from issuing a debenture under this  
8 title unless the project funded with the debenture meets  
9 one of the following economic development objectives:

10 “(1) The creation of job opportunities within  
11 two years of the completion of the project or the  
12 preservation or retention of jobs attributable to the  
13 project.

14 “(2) Improving the economy of the locality,  
15 such as stimulating other business development in  
16 the community, bringing new income into the area,  
17 or assisting the community in diversifying and stabi-  
18 lizing its economy.

19 “(3) The achievement of one or more of the fol-  
20 lowing public policy goals:

21 “(A) Business district revitalization or ex-  
22 pansion of businesses in low-income commu-  
23 nities which would be eligible for a new markets  
24 tax credit under section 45(D)(a) of the Inter-  
25 nal Revenue Code of 1986, or implementing  
26 regulations issued under that section.



1 “(B) Expansion of exports.

2 “(C) Expansion of minority business devel-  
3 opment or women-owned business development.

4 “(D) Rural development.

5 “(E) Expansion of small business concerns  
6 owned and controlled by veterans, as defined in  
7 section 3(q) of the Small Business Act (15  
8 U.S.C. 632(q)), especially service-disabled vet-  
9 erans, as defined in such section 3(q).

10 “(F) Enhanced economic competition, in-  
11 cluding the advancement of technology, plan re-  
12 tooling, conversion to robotics, or competition  
13 with imports.

14 “(G) Changes necessitated by Federal  
15 budget cutbacks, including defense related in-  
16 dustries.

17 “(H) Business restructuring arising from  
18 federally mandated standards or policies affect-  
19 ing the environment or the safety and health of  
20 employees.

21 “(I) Reduction of energy consumption by  
22 at least 10 percent.

23 “(J) Increased use of sustainable design,  
24 including designs that reduce the use of green-  
25 house gas emitting fossil fuels, or low-impact

1 design to produce buildings that reduce the use  
2 of nonrenewable resources and minimize envi-  
3 ronmental impact.

4 “(K) Plant, equipment and process up-  
5 grades of renewable energy sources such as the  
6 small-scale production of energy for individual  
7 buildings or communities consumption, com-  
8 monly known as micropower, or renewable fuels  
9 producers including biodiesel and ethanol pro-  
10 ducers.

11 “(4) Debt refinancing to the extent permitted  
12 by section 508(d).

13 “(b) JOB CREATION AND RETENTION REQUIRE-  
14 MENTS.—

15 “(1) IN GENERAL.—A project meets the job  
16 creation or retention objective set forth in subsection  
17 (a)(1) if the project creates or retains one job for  
18 every \$65,000 guaranteed by the Administrator, ex-  
19 cept that the amount shall be \$100,000 in the case  
20 of a project of a small manufacturer.

21 “(2) EXCEPTIONS.—

22 “(A) Paragraph (1) shall not apply to a  
23 project for which eligibility is based on the ob-  
24 jectives set forth in subsection (a)(2) or (a)(3)  
25 if the certified development company’s portfolio

1 of outstanding debentures creates or retains one  
2 job for every \$65,000 guaranteed by the Ad-  
3 ministrator.

4 “(B) For projects in Alaska, Hawaii,  
5 State-designated enterprise zones, empower-  
6 ment zones, enterprise communities, labor sur-  
7 plus areas designated by the Administrator, the  
8 certified development company’s portfolio may  
9 average not more than \$75,000 per job created  
10 or retained.

11 “(C) Loans for projects of small manufac-  
12 turers shall be excluded from the calculations in  
13 subparagraphs (A) and (B).

14 “(c) COMBINATION OF CERTAIN GOALS.—A small  
15 business concern that is unconditionally owned by more  
16 than 1 individual, or a corporation, the stock of which is  
17 owned by more than 1 individual, shall be deemed to have  
18 achieved a goal under subsection (a)(3) if a combined own-  
19 ership share of not less than 51 percent is held by individ-  
20 uals who are in 1 of, or a combination of, the groups de-  
21 scribed in subparagraphs (C) or (E) of subsection (a)(1).

22 “(d) COMPOSITION OF THE PROJECT.—

23 “(1) IN GENERAL.—The projects described in  
24 this section shall include, but not be limited to, plant  
25 acquisition, construction, conversion, expansion (in-

1 including the acquisition of land), equipment and re-  
2 lated project costs, or to acquire the stock of a cor-  
3 poration (as long as the value of the loan for the ac-  
4 quisition of the stock does not exceed the fixed asset  
5 value attributable to such assets as would be eligible  
6 for financing under subsection (a).

7 “(2) DEBT REFINANCING.—Any financing ap-  
8 proved under this title may include a limited amount  
9 of debt refinancing if the project involves the expan-  
10 sion of a small business concern.

11 “(3) LIMITATION.—The amount of the existing  
12 indebtedness may be refinanced and added to the ex-  
13 pansion cost if—

14 “(A) the existing indebtedness does not ex-  
15 ceed 50 percent of the project cost of the ex-  
16 pansion;

17 “(B) the proceeds of the indebtedness were  
18 used to acquire land, including a building situ-  
19 ated thereon, to construct a building thereon, or  
20 to purchase equipment;

21 “(C) the existing indebtedness is  
22 collateralized by fixed assets;

23 “(D) the existing indebtedness was in-  
24 curred for the benefit of the small business con-  
25 cern;

1           “(E) the financing under this title will be  
2           used only for refinancing existing indebtedness  
3           or costs relating to the project financed under  
4           this title;

5           “(F) the financing under this title will pro-  
6           vide a substantial benefit to the borrower when  
7           prepayment penalties, financing fees, and other  
8           financing costs are accounted for;

9           “(G) the borrower has been current on all  
10          payments due on the existing debt for not less  
11          than 1 year preceding the date of refinancing;  
12          and

13          “(H) the financing under this title will  
14          provide better terms or rate of interest than the  
15          existing indebtedness at the time of refinancing.

16          “(e) DEFINITION.—For purposes of subparagraphs  
17          (J) and (K) of subsection (a)(1), the terms included have  
18          the meanings given those terms under the Leadership in  
19          Energy and Environmental Design (more generally re-  
20          ferred to as LEED) standard for green building certifi-  
21          cation, as determined by the Administrator through regu-  
22          lation to be published in the Code of Federal Regulation.”.

23       **SEC. 208. PROJECT FUNDING REQUIREMENTS.**

24          Section 508 of the Small Business Investment Act  
25          of 1958 (15 U.S.C. 697e) is amended to read as follows:

1   **“SEC. 508. PROJECT FUNDING REQUIREMENTS.**

2           “(a) IN GENERAL.—Any project described in section  
3   507 must meet the funding standards set forth in this sec-  
4   tion.

5           “(b) SIZE OF DEBENTURE.—The Administrator shall  
6   only be permitted to guarantee debenture issued by a cer-  
7   tified development company up to the following amounts:

8           “(1) \$3,000,000 for any project of a small busi-  
9   ness concern.

10          “(2) \$4,000,000 for any project that meets the  
11   public policy goals set forth in section 507(a)(3).

12          “(3) \$4,000,000 for any project to be located in  
13   a low-income community as that term is described in  
14   section 507(a)(3)(A).

15          “(4) \$8,000,000 for each project of a small  
16   manufacturer.

17          “(5) \$8,000,000 for each project that reduces  
18   the borrower’s energy consumption by at least 10  
19   percent.

20          “(6) \$8,000,000 for each project that generates  
21   renewable energy or renewable fuels, such as, but  
22   not limited to, biodiesel or ethanol production.

23          “(7) \$10,000,000 for each project for a small  
24   business concern that constitutes a major source of  
25   employment as that term is used in section

1       7(b)(3)(E) of the Small Business Act (15 U.S.C.  
2       636(b)(3)(E)).

3       “(c) FUNDING FROM SOURCES OTHER THAN DE-  
4       BENTURES ISSUED BY CERTIFIED DEVELOPMENT COM-  
5       PANIES.—

6               “(1) IN GENERAL.—Any project financed pur-  
7       suant to this title must have the following contribu-  
8       tions from parties other than the debenture issued  
9       by the certified development company:

10               “(A) FUNDING FROM INSTITUTIONS.—

11                       “(i) If a small business concern pro-  
12       vides—

13                               “(I) the minimum contribution  
14       required by subparagraph (B) not less  
15       than 50 percent of the total cost of  
16       any project financed shall come from  
17       State or local governments, banks or  
18       other financial institutions, or founda-  
19       tions or other not-for-profit institu-  
20       tions; and

21                               “(II) more than the minimum  
22       contribution required under subpara-  
23       graph (B), any excess contribution  
24       may be used to reduce the amount re-  
25       quired from institutions in described

1 in subclause (I), except that the  
2 amount provided by such institution  
3 may not be reduced to an amount  
4 that is less than the amount of the  
5 loan made by the Administrator.

6 “(B) FUNDING FROM SMALL BUSINESS  
7 CONCERNS.—The small business concern (or its  
8 owners, stockholders, or affiliates) that will  
9 have a project financed pursuant to this title  
10 shall provide—

11 “(i) at least 15 percent of the total  
12 cost of the project financed if the small  
13 business concern has been in operation for  
14 a period of 2 years or less;

15 “(ii) at least 15 percent of the total  
16 cost of the project financed if the project  
17 involves construction of a limited or single  
18 purposed building or structure;

19 “(iii) at least 20 percent of the total  
20 cost of the project financed if the project  
21 involves both of the conditions in clauses  
22 (i) or (ii); or

23 “(iv) at least 10 percent of the total  
24 cost of the project financed and not cov-  
25 ered by clauses (i), (ii), or (iii), at the dis-



1                   cretion of the certified development com-  
2                   pany.

3                   “(2) SELLER FINANCING.—Seller-provided fi-  
4                   nancing may be used to meet the requirements of  
5                   paragraph (1)(B), if the seller subordinates the in-  
6                   terest of the seller in the property to the debenture  
7                   guaranteed by the Administrator.

8                   “(3) COLLATERALIZATION.—

9                   “(A) IN GENERAL.—The collateral pro-  
10                  vided by the small business concern shall gen-  
11                  erally include a subordinate lien position on the  
12                  property being financed under this title, and is  
13                  only one of the factors to be evaluated in the  
14                  credit determination. Additional collateral shall  
15                  be required only if the Administrator deter-  
16                  mines, on a case-by-case basis, that additional  
17                  security is necessary to protect the interest of  
18                  the Government.

19                  “(B) APPRAISALS.—With respect to com-  
20                  mercial real property provided by the small  
21                  business concern as collateral, an appraisal of  
22                  the property by a State licensed or certified ap-  
23                  praiser—

24                               “(i) shall be required by the Adminis-  
25                               trator before disbursement of the loan if

1           the estimated value of that property is  
2           more than \$400,000; or

3           “(ii) may be required by the Adminis-  
4           trator or the lender before disbursement of  
5           the loan if the estimated value of that  
6           property is \$400,000 or less, and such ap-  
7           praisal is necessary for appropriate evalua-  
8           tion of creditworthiness.

9           “(C) ADJUSTMENT.—The Administrator  
10          shall periodically adjust the amount under sub-  
11          paragraph (B) to account for the effects of in-  
12          flation, provided that no such adjustment shall  
13          be less than \$50,000.

14          “(4) LIMITATION ON LEASING.—

15                 “(A) If the project funded under this sec-  
16                 tion includes the acquisition of a facility or the  
17                 construction of a new facility, the small busi-  
18                 ness concern—

19                         “(i) shall permanently occupy and use  
20                         not less than 50 percent of the project  
21                         property; and

22                         “(ii) may, on a temporary or perma-  
23                         nent basis, lease to others not more than  
24                         50 percent of the project property.

1           “(B) For purposes of this paragraph, the  
2           term ‘project property’ means—

3                   “(i) the building and any exterior  
4                   areas used in connection with the building  
5                   or a part thereof and includes all of the  
6                   parcels of real property included in the  
7                   project in the aggregate; and

8                   “(ii) occupancy and use of the project  
9                   property by the operating company shall be  
10                  deemed to be occupancy and used by the  
11                  small business concern that received fund-  
12                  ing under this section.

13          “(d) REGULATIONS.—(1) The Administrator shall  
14          promulgate regulations, after notice and comment, rules  
15          to implement the provisions of this section within 60 days  
16          after enactment of the Job Creation and Economic Devel-  
17          opment Through CDC Modernization Act of 2009. The  
18          Administrator may limit the comment period to 15 days  
19          to meet this deadline.

20          “(2) If the Administrator fails to promulgate the reg-  
21          ulations as provided in paragraph (1), all leases entered  
22          into, absent clear and convincing evidence of fraud, shall  
23          be deemed to be in compliance with the limitations on leas-  
24          ing in this subparagraph for purposes of honoring the

1 guarantee on the debenture issued by the certified develop-  
2 ment company.

3 “(3) Any regulation of the Administrator or interpre-  
4 tation of any regulation by the Administrator or the Office  
5 of Hearings and Appeals that restricts the use of proceeds  
6 for leased projects that was in effect on the date of enact-  
7 ment of the Job Creation and Economic Development  
8 Through CDC Modernization Act of 2009 shall hereby  
9 cease to apply.

10 “(4) Any interpretation of the leasing provisions  
11 issued by the Administrator prior to the issuance of regu-  
12 lations required by paragraph (1) shall be considered null  
13 and void and may be not be used in any court of com-  
14 petent jurisdiction, be it Federal or State court, to dis-  
15 honor any guarantee of a debenture issued by a certified  
16 development company for a project funded pursuant to  
17 this section.

18 “(e) OWNERSHIP CALCULATION.—Ownership re-  
19 quirements to determine the eligibility of a small business  
20 concern that applies for funding under this title shall be  
21 determined without regard to any ownership interest of  
22 a spouse arising solely from the application of the commu-  
23 nity property laws of a State for purposes of determining  
24 marital interests.

1       “(f) COMBINATION FINANCING.—Financing under  
2 this title may be provided to a borrower in the maximum  
3 amount provided in this section, and a loan guarantee  
4 under section 7(a) of the Small Business Act (15 U.S.C.  
5 636(a)) may be provided to the same borrower in the max-  
6 imum amount provided in section 7(a)(3)(A) of such Act,  
7 to the extent that the borrower otherwise qualifies for such  
8 assistance.

9       “(g) RULES FOR DEBENTURES FUNDING PROJECTS  
10 IN LOW-INCOME AREAS.—

11           “(1) SIZE STANDARDS.—For purposes of deter-  
12 mining the size of small business concern seeking  
13 funds for a project described in subsection (b)(3),  
14 the size standard promulgated by the Administrator  
15 in section 121.201 of title 13, Code of Federal Reg-  
16 ulations as in effect on January, 1, 2009, or any  
17 successor regulation, shall be increased by 25 per-  
18 cent.

19           “(2) PERSONAL LIQUIDITY.—

20           “(A) IN GENERAL.—The amount of per-  
21 sonal resources of an owner for a project de-  
22 scribed in subsection (b)(3) that are excluded  
23 from the amount required to reduce the portion  
24 of the project funded by the Administrator shall  
25 be not less than 25 percent more than that re-

1           quired for funding of any other project de-  
 2           scribed in subsection (b).

3           “(B) DEFINITION.—For purposes of sub-  
 4           paragraph (A), the term ‘owner’ means any  
 5           person that owns not less than 20 percent of  
 6           the equity or has not less than 20 percent of  
 7           the voting rights (in the case of a small busi-  
 8           ness organized as a partnership) of a small  
 9           business concern seeking funds under this sec-  
 10          tion.

11          “(h) APPLICABILITY OF CREDIT ELSEWHERE AND  
 12          PERSONAL RESOURCES REGULATIONS.—Except as pro-  
 13          vided in subsection (c)(1)(B) with respect to project fund-  
 14          ing, the Administrator shall be prohibited from applying  
 15          the regulations set forth in section 120.101 and 120.102  
 16          of title 13, Code of Federal Regulation as in effect on Jan-  
 17          uary 1, 2009, or any successor regulation that applies a  
 18          credit elsewhere or personal resources test to any applica-  
 19          tion for a loan under this title pending or filed after the  
 20          date of enactment of the Job Creation and Economic De-  
 21          velopment through CDC Modernization Act of 2009.”.

22          **SEC. 209. PRIVATE DEBENTURE SALES AND POOLING OF**  
 23                                   **DEBENTURES.**

24          Section 509 of the Small Business Investment Act  
 25          of 1958 (15 U.S.C. 697f) is amended to read as follows:

1 **“SEC. 509. PRIVATE DEBENTURE SALES AND POOLING OF**  
2 **DEBENTURES.**

3 “(a) PRIVATE DEBENTURE SALES.—Notwith-  
4 standing any other law, rule, or regulation, the Adminis-  
5 trator shall sell to investors, either publicly or by private  
6 placement, debentures issued by certified development  
7 companies pursuant to this title for the full amount of the  
8 program levels authorized in each fiscal year and if there  
9 is not authorization of a level, the amount of debentures  
10 actually issued.

11 “(b) FEDERAL FINANCING BANK.—Nothing in any  
12 provision of law shall be construed to authorize the Fed-  
13 eral Financing Bank to acquire—

14 “(1) any obligation the payment of principal or  
15 interest on which at any time has been guaranteed  
16 in whole or in part under this title and which is  
17 being sold pursuant to the provisions of this section;

18 “(2) any obligation which is an interest in any  
19 obligation which is an interest in any obligation de-  
20 scribed in paragraph (1); or

21 “(3) any obligation which is secured by, or sub-  
22 stantially all of the value of which is attributable to,  
23 any obligation described in paragraph (1) or (2).

24 “(c) POOLING OF DEBENTURES.—

25 “(1) IN GENERAL.—The Administrator is au-  
26 thorized to issue trust certificates representing own-

1       ership of all or a fractional part of debentures issued  
2       by certified development companies and guaranteed  
3       under this title if such trust certificates are based on  
4       and backed by a trust or pool approved by the Ad-  
5       ministrator and composed solely of guaranteed de-  
6       bentures.

7               “(2) GUARANTEE OF TRUST CERTIFICATES.—

8       The Administrator is authorized, upon such terms  
9       and conditions as are deemed appropriate, to guar-  
10      antee the timely payment of the principal of and in-  
11      terest on trust certificates issued by the Adminis-  
12      trator or its agent for purposes of this section. Such  
13      guarantee shall be limited to the extent of principal  
14      and interest on the guaranteed debentures which  
15      compose the trust or pool. In the event that a deben-  
16      ture in such trust or pool is prepaid, either volun-  
17      tarily or in the event of default, the guarantee of  
18      timely payment of principal and interest on the trust  
19      certificates shall be reduced in proportion to the  
20      amount of principal and interest such prepaid deben-  
21      ture represents in the trust or pool. Interest on pre-  
22      paid or defaulted debentures shall accrue and be  
23      guaranteed by the Administrator only through the  
24      date of payment on the guarantee. During the term  
25      of the trust certificate, it may be called for redemp-



1       tion due to prepayment or default of all debentures  
2       constituting the pool.

3           “(3) FULL FAITH AND CREDIT.—The full faith  
4       and credit of the United States is pledged to the  
5       payment of all amounts which may be required to be  
6       paid under any guarantee of such trust certificates  
7       issued by the Administrator or its agent pursuant to  
8       this section.

9           “(4) PROHIBITION ON GUARANTEE FEE FOR  
10      POOLS.—The Administrator shall not collect any fee  
11      for any guarantee under this section: provided, that  
12      nothing herein shall preclude any agent of the Ad-  
13      ministrator from collecting a fee approved by the  
14      Administrator for the functions performed in para-  
15      graph (6)(F).

16          “(5) SUBROGATION.—

17           “(A) IN GENERAL.—In the event the Ad-  
18      ministrator pays a claim under a guarantee  
19      issued under this section, it shall be subrogated  
20      fully to the rights satisfied by such payment.

21           “(B) ADMINISTRATOR EXERCISE OF  
22      RIGHTS.—No Federal, State, or local law shall  
23      preclude or limit the exercise by the Adminis-  
24      trator of its ownership rights in the debentures

1 constituting the trust or pool against which the  
2 trust certificates are issued.

3 “(6) CENTRAL REGISTRATION.—

4 “(A) IN GENERAL.—The Administrator  
5 shall provide for a central registration of all  
6 trust certificates sold pursuant to this section.

7 “(B) CONTRACT.—The Administrator shall  
8 contract with an agent to carry out on behalf  
9 of the Administrator the central registration  
10 functions of this section and the issuance of  
11 trust certificates to facilitate pooling.

12 “(C) BOND.—The Administrator shall re-  
13 quire the contractor to provide a fidelity bond  
14 or insurance in such amounts as is deemed nec-  
15 essary to fully protect the interests of the Gov-  
16 ernment.

17 “(D) DISCLOSURE REQUIREMENTS.—The  
18 Administrator shall, prior to any sale, require  
19 the seller to disclose to a purchaser of a trust  
20 certificate issued pursuant to this section, infor-  
21 mation on terms, conditions, and yield of such  
22 instruments.

23 “(E) AUTHORITY TO REGULATE.—The Ad-  
24 ministrator shall have the authority to regulate

1           brokers and dealers in trust certificates sold  
2           pursuant to this section.

3                   “(F) BOOK ENTRY PERMITTED.—Nothing  
4           in this paragraph shall prohibit the utilization  
5           of a book-entry or other electronic form of reg-  
6           istration for trust certificates.”.

7   **SEC. 210. FORECLOSURE AND LIQUIDATION OF LOANS.**

8           Section 510 of the Small Business Investment Act  
9   of 1958 (15 U.S.C. 697g) is amended to read as follows:

10   **“SEC. 510. FORECLOSURE AND LIQUIDATION OF LOANS.**

11           “(a) DELEGATION OF AUTHORITY.—In accordance  
12   with this section, the Administrator shall delegate to any  
13   certified development company that meets the eligibility  
14   requirements of subsection (b)(1), the authority to fore-  
15   close and liquidate, or to otherwise treat in accordance  
16   with this section, defaulted loans in its portfolio that are  
17   funded with the proceeds of debentures guaranteed by the  
18   Administrator pursuant to this title.

19           “(b) ELIGIBILITY FOR DELEGATION.—

20                   “(1) REQUIREMENTS.—A certified development  
21   company shall be eligible for a delegation of author-  
22   ity under subsection (a) if—

23                           “(A) the certified development company—

24                                   “(i) has participated in the loan liq-  
25                           uidation pilot program established by the

1 Small Business Programs Improvement  
2 Act of 1996 (15 U.S.C. 695 note), before  
3 the enactment of the Job Creation and  
4 Economic Development Through CDC  
5 Modernization Act of 2009;

6 “(ii) is an accredited or premier cer-  
7 tified development company; or

8 “(iii) during the 3 fiscal years imme-  
9 diately prior to seeking such a delegation,  
10 has made an average of not less than 10  
11 loans per year that are funded with the  
12 proceeds of debentures guaranteed under  
13 this title; and

14 “(B) the certified development company—

15 “(i) has one or more employees—

16 “(I) with not less than 2 years of  
17 substantive, decisionmaking experi-  
18 ence in administering the liquidation  
19 and workout of problem loans secured  
20 in a manner substantially similar to  
21 loans funded with the proceeds of de-  
22 bentures guaranteed under this title;  
23 and

24 “(II) who have completed a train-  
25 ing program on loan liquidation devel-

1                   oped by the Administrator in conjunc-  
2                   tion with a certified development com-  
3                   pany that meet the requirements of  
4                   this paragraph; or

5                   “(ii) submits to the Administrator  
6                   documentation demonstrating that the  
7                   company has contracted with a qualified  
8                   third-party to perform any liquidation ac-  
9                   tivities and secures the approval of the  
10                  contract by the Administrator with respect  
11                  to the qualifications of the contractor and  
12                  the terms and conditions of liquidation ac-  
13                  tivities.

14               “(2) CONFIRMATION.—On the request, the Ad-  
15               ministrator shall examine the qualifications of any  
16               certified development company described in sub-  
17               section (a) to determine if such company is eligible  
18               for the delegation of authority under this section. If  
19               the Administrator determines that a company is not  
20               eligible, the Administrator shall provide the com-  
21               pany, in writing, with the reasons for such ineligi-  
22               bility. The certified development company shall be  
23               entitled to request delegated authority and the Ad-  
24               ministrator shall review the request only to address  
25               whether the certified development company has rec-

1       tified the reasons for the Administrator’s original  
2       determination of ineligibility.

3       “(c) SCOPE OF DELEGATED AUTHORITY.—

4               “(1) IN GENERAL.—Each certified development  
5       company to which the Administrator delegates au-  
6       thority under section (a) may with respect to any  
7       loan described in subsection (a)—

8               “(A) perform all liquidation and fore-  
9       closure functions, including the purchase in ac-  
10      cordance with this subsection of any other in-  
11      debtedness secured by the property securing the  
12      loan, in a reasonable and sound manner accord-  
13      ing to commercially accepted practices, pursu-  
14      ant to a liquidation plan approved in advance  
15      by the Administrator under paragraph (2)(A);

16              “(B) litigate any matter relating to the  
17      performance of the functions described in sub-  
18      paragraph (A), except that the Administrator  
19      may—

20              “(i) defend or bring any claim if—

21              “(I) the outcome of the litigation  
22      may adversely affect the Administra-  
23      tor’s management of the program es-  
24      tablished under this title; or

1                   “(II) the Administrator is enti-  
2                   tled to legal remedies not available to  
3                   a certified development company and  
4                   such remedies will benefit either the  
5                   Administrator or the certified develop-  
6                   ment company; and

7                   “(ii) oversee the conduct of any such  
8                   litigation; and

9                   “(C) take other appropriate actions to  
10                  mitigate loan losses in lieu of total liquidation  
11                  or foreclosures, including the restructuring of a  
12                  loan in accordance with prudent loan servicing  
13                  practices and pursuant to a workout plan ap-  
14                  proved in advance by the Administrator under  
15                  paragraph (2)(C).

16               “(2) ADMINISTRATOR APPROVAL OF PLANS.—

17               “(A) CERTIFIED DEVELOPMENT COMPANY  
18               SUBMISSION OF PLANS.—Before carrying out  
19               functions described in paragraph (1)(A) or  
20               (1)(C), the certified development company shall  
21               submit to the Administrator a proposed liquida-  
22               tion plan, any proposal for the Administrator to  
23               the purchase of any other indebtedness secured  
24               by the property securing a defaulted loan, or a  
25               workout plan or any combination thereof.

1           “(B) ADMINISTRATOR APPROVAL PROCE-  
2 DURES.—

3           “(i) TIMING.—Not late than 15 busi-  
4 ness days after the plans described in sub-  
5 paragraph (A) are received by the Admin-  
6 istrator, the Administrator shall approve or  
7 reject the plan.

8           “(ii) NOTICE OF NO DECISION.—With  
9 respect to any plan that cannot be ap-  
10 proved or denied within the 15-day period  
11 required by clause (i), the Administrator  
12 shall within such period provide in accord-  
13 ance with subparagraph (E) notice to the  
14 company that submitted the plan.

15          “(C) ROUTINE ACTIONS.—In carrying out  
16 the functions described in paragraph (1)(A), a  
17 certified development company may undertake  
18 routine actions not addressed in a liquidation or  
19 workout plan without obtaining additional ap-  
20 proval from the Administrator.

21          “(D) COMPROMISE OF INDEBTEDNESS.—  
22 In carrying out functions described in para-  
23 graph (1)(A), a certified development company  
24 may—



1 “(i) consider an offer made by an obli-  
2 gor to compromise the debt for less than  
3 the full amount owing; and

4 “(ii) pursuant to such offer, release  
5 any obligor or other party contingently lia-  
6 ble, if the company secures the written ap-  
7 proval of the Administrator.

8 “(E) CONTENTS OF NOTICE OF NO DECI-  
9 SION.—Any notice provided by the Adminis-  
10 trator pursuant to subparagraph (B)(ii) shall—

11 “(i) be in writing stating the specific  
12 reasons for which the Administrator was  
13 unable to act on the request submitted  
14 pursuant to subparagraph (A);

15 “(ii) provide an estimate of the addi-  
16 tional time needed for the Administrator to  
17 reach a decision on the request; and

18 “(iii) specify any additional informa-  
19 tion or documentation that the Adminis-  
20 trator needs to make a decision but was  
21 not provided in the plan submitted by the  
22 certified development company.

23 “(3) CONFLICT OF INTEREST.—In carrying out  
24 functions described in paragraph (1), a certified de-  
25 velopment company shall take no action that would

1 result in an actual or apparent conflict of interest  
2 between the company (or any employee of the com-  
3 pany) and any third-party lender, associate of a  
4 third-party lender, or any other person participating  
5 in a liquidation, foreclosure, or loss mitigation ac-  
6 tion.

7 “(d) SUSPENSION OR REVOCATION OF AUTHOR-  
8 ITY.—

9 “(1) IN GENERAL.—The Administrator may re-  
10 voke or suspend a delegation of authority under this  
11 section to certified development company if the Ad-  
12 ministrator determines that the company—

13 “(A) does not meet the requirements of  
14 subsection (b)(1);

15 “(B) violated any applicable law or rule or  
16 regulation of the Administrator that in the esti-  
17 mation of the Administrator requires revoca-  
18 tion; or

19 “(C) fails to comply with any reporting  
20 that may be established by the Administrator  
21 relating to the establishment of eligibility in  
22 subsection (b)(1) or carrying out the functions  
23 described in subsection (c)(1).

1           “(2) WRITTEN NOTICE.—The Administrator  
2           shall provide in writing detailed reason why the dele-  
3           gation of authority was suspended or revoked.

4           “(e) PARTICIPATION IN LIQUIDATION.—

5           “(1) IN GENERAL.—A certified development  
6           company which elects not to apply for authority to  
7           foreclose and liquidate defaulted loans under this  
8           section, or which the Administrator determines to be  
9           ineligible for such authority, shall contract with a  
10          qualified third-party to perform foreclosure and liq-  
11          uidation of defaulted loans in its portfolio.

12          “(A) CONTRACT APPROVAL.—The contract  
13          entered into by the certified development com-  
14          pany specified in paragraph (1) shall be contin-  
15          gent upon approval by the Administrator with  
16          respect to the qualifications of the contractor  
17          and the terms and conditions of liquidation ac-  
18          tivities. The Administrator shall not unreason-  
19          ably withhold such approval.

20          “(B) NOTIFICATION OF REJECTION.—If  
21          the Administrator rejects the contract, the Ad-  
22          ministrator shall provide a notice to the cer-  
23          tified development company, in writing, explain-  
24          ing the reasons for such rejection within ten  
25          business days after submission of the contract.

1           “(C) RESUBMITTAL.—The certified devel-  
2           opment company shall be permitted to resubmit  
3           the contract and the Administrator’s review of  
4           any such resubmittal shall be limited to  
5           insufficiencies described in the notification of  
6           rejection.

7           “(D) REGULATIONS.—The Administrator  
8           shall promulgate regulations, after notice and  
9           opportunity for comment, adopting standards  
10          for the approval of qualified third-party con-  
11          tractors within 90 days after the date of enact-  
12          ment of the Job Creation and Economic Devel-  
13          opment Through CDC Modernization Act of  
14          2009.

15          “(E) FAILURE TO PROMULGATE REGULA-  
16          TIONS.—If the Administrator fails to promul-  
17          gate such regulations, any contract for liquida-  
18          tion entered into by a certified development  
19          company under this subsection shall be consid-  
20          ered to valid for the purposes of this subsection  
21          and subsection (f).

22          “(F) EFFECT OF ADMINISTRATOR’S PRO-  
23          MULGATION OF REGULATIONS.—If the Adminis-  
24          trator promulgates regulations after the dead-  
25          line specified in subparagraph (D), those regu-

1           lations shall not have any retroactive applica-  
2           tion with respect to contracts that are described  
3           in subparagraph (E).

4           “(2) COMMENCEMENT.—This subsection shall  
5           not require any certified development company to  
6           liquidate defaulted loans until the Administrator im-  
7           plements a system to compensate and reimburse cer-  
8           tified development companies for liquidation of any  
9           defaulted loans.

10          “(f) COMPENSATION AND REIMBURSEMENT.—

11           “(1) REIMBURSEMENT OF EXPENSES.—The  
12           Administrator shall reimburse each certified develop-  
13           ment company for all expenses paid by such com-  
14           pany as part of the foreclosure and liquidation ac-  
15           tivities taken to carry out this section, if the ex-  
16           penses—

17           “(A) were—

18           “(i) approved in advance by the Ad-  
19           ministrator, either specifically in a plan  
20           submitted pursuant to subsection (c) or  
21           generally, such as, but not limited to, ac-  
22           tions approved by the Administrator in  
23           regulations or other interpretative  
24           issuances; or

1                   “(ii) incurred by the development  
2                   company on an emergency basis without  
3                   prior approval from the Administrator, if  
4                   the Administrator determines that the ex-  
5                   penses were reasonable and appropriate;  
6                   and

7                   “(B) are submitted by the certified devel-  
8                   opment company to the Administrator not later  
9                   than 3 years after the date the expense was in-  
10                  curred or the bill therefore is submitted to the  
11                  certified development company, whichever is  
12                  later.

13               “(2) ALTERNATIVE REIMBURSEMENT.—As an  
14               alternative to the procedure in paragraph (1), a cer-  
15               tified development company may elect to obtain re-  
16               imbursement for all such expenses from the proceeds  
17               of any collateral provided by the borrower that was  
18               liquidated by the certified development company if  
19               the expenses comply with the requirements of para-  
20               graph (1). Within 6 months of the reimbursement,  
21               the certified development company shall provide the  
22               Administrator with the same information and docu-  
23               mentation it would be required to submit to obtain  
24               payment from the Administrator.

1           “(3) REGULATIONS.—The Administrator shall  
2       promulgate regulations, after notice and comment to  
3       carry out the provisions of paragraphs (1) and (2).  
4       If the Administrator does not promulgate such regu-  
5       lations within one year, certified development compa-  
6       nies shall be authorized, notwithstanding the re-  
7       quirements of subsection (e)(2), to liquidate de-  
8       faulted loans and such costs and expenses incurred,  
9       absent clear and convincing evidence of fraud, shall  
10      be deemed to be approved.

11           “(4) COMPENSATION FOR RESULTS.—

12           “(A) DEVELOPMENT.—In regulations pro-  
13      mulgated pursuant to paragraph (3), the Ad-  
14      ministrator also shall develop a schedule of  
15      compensation that provides monetary incentives  
16      for certified development companies in order to  
17      increase recoveries on defaulted loans.

18           “(B) CRITERIA.—The schedule shall—

19           “(i) be based on a percentage of the  
20      net amount recovered, but shall not exceed  
21      a maximum amount; and

22           “(ii) not apply to any foreclosure  
23      which is conducted under a contract be-  
24      tween a certified development company and

1 a qualified third party to perform the fore-  
2 closure and liquidation.

3 “(C) PAYMENT.—The Administrator shall  
4 transmit the compensation provided herein to  
5 the development company from the proceeds of  
6 liquidated collateral, unless he utilizes another  
7 source for funds, within 30 days from the date  
8 when the liquidation case has been closed and  
9 documentation received.”.

10 **SEC. 211. REPORTS AND REGULATIONS.**

11 Title V of the Small Business Investment Act of 1958  
12 (15 U.S.C. 661 and following) is amended by adding at  
13 the end the following:

14 **“SEC. 511. REPORTS.**

15 “(a) PREMIER CERTIFIED DEVELOPMENT COMPA-  
16 NIES.—The Administrator shall report annually to the  
17 Committee on Small Business of the House of Representa-  
18 tives and the Committee on Small Business and Entrepre-  
19 neurship of the Senate on the implementation of section  
20 504. Each report shall include—

21 “(1) the number of premier certified develop-  
22 ment companies;

23 “(2) the debenture volume of each premier cer-  
24 tified development company;



1           “(3) a comparison of the loss rate for premier  
2           certified development companies to the loss rate for  
3           accredited or certified development companies; and

4           “(4) such other information as the Adminis-  
5           trator deems appropriate.

6           “(b) REPORTS ON LIQUIDATION AND FORE-  
7 CLOSURES.—

8           “(1) IN GENERAL.—Based on information pro-  
9           vided by certified development companies and the  
10          Administrator, the Administrator shall submit annu-  
11          ally to the Committee on Small Business and Entre-  
12          preneurship of the Senate and the Committee on  
13          Small Business of the House of Representatives a  
14          report on the results of delegation of authority under  
15          section 510.

16          “(2) CONTENTS.—Each report submitted under  
17          paragraph (1) shall include the following informa-  
18          tion:

19                 “(A) With respect to each loan foreclosed  
20                 or liquidated by a certified development com-  
21                 pany, or for which losses were otherwise miti-  
22                 gated by pursuant to a workout plan—

23                         “(i) the total cost of the project fi-  
24                         nanced with the loan;

1                   “(ii) the total original dollar amount  
2                   guaranteed by the Administration;

3                   “(iii) the total dollar amount of the  
4                   loan at the time of liquidation, foreclosure,  
5                   or mitigation of loss;

6                   “(iv) the total dollar losses resulting  
7                   from the liquidation, foreclosure, or mitiga-  
8                   tion of loss; and

9                   “(v) the total recoveries resulting  
10                  from the liquidation, foreclosure, or mitiga-  
11                  tion of loss, both as a percentage of the  
12                  amount guaranteed and the total cost of  
13                  the project financed.

14                 “(B) With respect to each certified devel-  
15                 opment company to which authority is dele-  
16                 gated under section 510, the totals of each of  
17                 the amounts described in clauses (i) through (v)  
18                 of subparagraph (A).

19                 “(C) With respect to each certified devel-  
20                 opment company that contracts with a qualified  
21                 third-party contractor pursuant to section  
22                 510(e), the total of each of the amounts de-  
23                 scribed in clauses (i) through (v) of subpara-  
24                 graph (A).

1           “(D) With respect to all loans subject to  
2           foreclosure, liquidation, or mitigation under sec-  
3           tion 510, the totals of each of the amounts de-  
4           scribed in clauses (i) through (v) of subpara-  
5           graph (A).

6           “(E) A comparison between—

7                   “(i) the information provided under  
8                   subparagraph (D) with respect to the 12-  
9                   month period preceding the date on which  
10                  the report is submitted; and

11                  “(ii) the same information with re-  
12                  spect to loans foreclosed and liquidated, or  
13                  otherwise treated, by the Administrator  
14                  during the same period.

15           “(F) The number of times that the Admin-  
16           istrator has failed to approve or reject a liq-  
17           uidation plan, workout plan, request to pur-  
18           chase indebtedness, or failed to approve a third-  
19           party contractor under section 510, including  
20           specific information regarding the reasons for  
21           the Administrator’s failure and any delays that  
22           resulted.

23           “(c) REPORTS ON COMBINATION FINANCING.—

24                   “(1) REPORTING REQUIREMENT.—Not later  
25           than 90 days after the date of enactment of the Job

1       Creation and Economic Development Through CDC  
2       Modernization Act of 2009, and annually thereafter,  
3       the Administrator shall submit a report to the Com-  
4       mittee on Small Business and Entrepreneurship of  
5       the Senate and the Committee on Small Business of  
6       the House of Representatives that—

7               “(A) includes the number of small business  
8               concerns that have financing under both section  
9               7(a) of the Small Business Act (15 U.S.C.  
10              636(a)) and title V of the Small Business In-  
11              vestment Act of 1958 (15 U.S.C. 695 et seq.)  
12              during the year before the year of that report;  
13              and

14              “(B) describes the total amount and gen-  
15              eral performance of the financing described in  
16              subparagraph (A).

17       “(d) REPORT ON OTHER ECONOMIC DEVELOPMENT  
18       ACTIVITY.—The Administrator shall compile and submit  
19       to Committee on Small Business of the House of Rep-  
20       resentatives and the Committee on Small Business and  
21       Entrepreneurship of the Senate on an annual basis, com-  
22       mencing in the year that the Job Creation and Economic  
23       Development Through CDC Modernization Act of 2009  
24       was enacted, a report that describes the economic and  
25       community development activities, other than loan making

1 under this title, of each certified development company  
2 during the prior fiscal year. The Administrator may con-  
3 tract with another party, including non-governmental enti-  
4 ties, to collect information or otherwise assist in the prepa-  
5 ration of the report required by this subsection.

6 **“SEC. 512. PROMULGATION OF REGULATIONS UNDER THIS**  
7 **TITLE.**

8 “(a) DEADLINES FOR IMPLEMENTING REGULA-  
9 TIONS.—Except as expressly provided elsewhere in the Job  
10 Creation and Economic Development Through CDC Mod-  
11 ernization Act of 2009, the Administrator shall promul-  
12 gate regulations under this title, after providing notice and  
13 the opportunity for comment, within 180 days after the  
14 date of enactment of that Act.

15 “(b) NOTICE AND COMMENT REQUIREMENTS IN  
16 GENERAL.—Except as otherwise provided elsewhere in  
17 this title, the Administrator shall provide, after the date  
18 of enactment of the Job Creation and Economic Develop-  
19 ment Through CDC Modernization Act of 2009, notice of  
20 any proposed change to a regulation implementing this  
21 title V (whether in existence on the date of enactment of  
22 the Job Creation and Economic Development Through  
23 CDC Modernization Act of 2009 or subsequently adopt-  
24 ed), publish such notification in the Federal Register, and  
25 provide a comment period of not less than 60 days.”.

1 **SEC. 212. PROGRAM NAME.**

2 Title V of the Small Business Investment Act is  
3 amended by adding the following new section after section  
4 512:

5 **“SEC. 513 PROGRAM NAME.**

6 “(a) IN GENERAL.—The program created by this  
7 title shall be referred to as the CDC Economic Develop-  
8 ment Loan Program.

9 “(b) MODIFICATION OF MATERIALS USED.—Within  
10 60 days after the date of enactment of the Job Creation  
11 and Economic Development Through CDC Modernization  
12 Act of 2009, the Administrator shall modify all documents  
13 and websites to conform to the name change made by this  
14 section.”.

15 **TITLE III—MISCELLANEOUS**

16 **SEC. 301. TERMINATION OF PILOT PROGRAM REGULATION.**

17 (a) TERMINATION.—Section 120.3 of title 13, Code  
18 of Federal Regulations, as in effect on January 1, 2009,  
19 shall cease to have any force and effect as of the date  
20 of enactment of this Act, and the Administrator is prohib-  
21 ited from adopting a new regulation that authorizes the  
22 Administrator to waive any regulation for the purpose of  
23 conducting a pilot program unless such waiver is specifi-  
24 cally granted by statute.

1 (b) EFFECT ON EXISTING PROGRAM.—Subsection  
2 (a) shall have no effect on any pilot program currently  
3 conducted by the Administrator.

4 (c) FUTURE PILOT PROGRAMS.—Any future pilot  
5 program conducted under the Administrator’s own initia-  
6 tive or pursuant to statutory authority granted in the  
7 Small Business Investment Act of 1958 or section 7 of  
8 the Small Business Act must be implemented only after  
9 notice in the Federal Register and the opportunity for  
10 comment.

11 **SEC. 302. REPORT ON STANDARD OPERATING PROCE-**  
12 **DURES.**

13 (a) REPORT.—The Administrator of the Small Busi-  
14 ness Administration shall submit to the Committee on  
15 Small Business of the House of Representatives and the  
16 Committee on Small Business and Entrepreneurship of  
17 the Senate a report within 180 days after enactment of  
18 this Act identifying each “Standard Operating Procedure”  
19 issued after January 1, 1996, that relates to the operation  
20 of a development company (in any manner) under title V  
21 of the Small Business Investment Act of 1958, that is still  
22 in effect on the date of enactment of this Act, and the  
23 regulation codified in title 13 of the Code of Federal Regu-  
24 lations that authorizes the issuance of the Standard Oper-  
25 ating Procedure and separately identifies the regulation

1 that the Standard Operating Procedure purports to inter-  
2 pret.

3 (b) INAPPLICABILITY.—If the Administrator fails to  
4 complete the report by the time specified in subsection (a),  
5 the Administrator shall, unless there is clear and con-  
6 vincing evidence of fraud, honor the terms and conditions  
7 of any debenture to the entity that issued the debenture  
8 pursuant to title V of the Small Business Investment Act  
9 of 1958 without regard to whether the entity complied  
10 with any of the Standard Operating Procedures described  
11 in subsection (a) until such time as the Administrator sub-  
12 mits the report required under subsection (a).

13 (c) DEFINITION.—For purposes of this section, the  
14 term “Standard Operating Procedure” has the meaning  
15 given that term in section 120.10 of title 13, Code of Fed-  
16 eral Regulations as that was in effect on January 1, 2009,  
17 and includes any reference to the acronym “SOP”.

18 **SEC. 303. ALTERNATIVE SIZE STANDARD.**

19 (a) REVIEW AND STUDY.—

20 (1) IN GENERAL.—The Administrator of the  
21 United States Small Business Administration shall  
22 study and review the optional size standard set forth  
23 in section 121.301(b) of title 13, Code of Federal  
24 Regulations as was in effect on January 1, 2009, for  
25 eligibility of a small business concern for financing



1 under title V of the Small Business Investment Act  
2 of 1958.

3 (2) CONTENTS.—The review shall analyze  
4 whether the alternative size standard includes the  
5 business concerns defined in section 3(a)(1) of the  
6 Small Business Act and what if any regulatory  
7 changes are needed in the alternative size standard.

8 (3) SUBMISSION TO CONGRESS.—The Adminis-  
9 trator shall submit its study and conclusions within  
10 180 days after the date of enactment of the Job  
11 Creation and Economic Development through CDC  
12 Modernization Act of 2009 to the Committee on  
13 Small Business and Entrepreneurship of the Senate  
14 and the Committee on Small Business of the House  
15 of Representatives.

16 (b) ISSUANCE OF REGULATIONS.—Any changes in  
17 the optional size standard described in subsection (a)(1)  
18 shall be promulgated within 180 days of the submission  
19 of the report to committees referred to in paragraph (3)  
20 of subsection (a).

21 (c) INTERIM ALTERNATIVE SIZE STANDARD.—Until  
22 the Administrator promulgates regulations either re-  
23 adopting the size standard referred to in subsection (a)(1)  
24 or adopts a new alternative size standard, the alternative  
25 size standard shall be a maximum tangible net worth of

1 not more than \$15,000,000 and an average net income  
2 after the payment of Federal taxes (but excluding any car-  
3 ryover losses) for the preceding two fiscal years not more  
4 than \$5,000,000.

○